

**REPORT OF THE
TEXAS FORENSIC SCIENCE COMMISSION**

**AUSTIN POLICE DEPARTMENT
CRIME LABORATORY
CONTROLLED SUBSTANCE INVESTIGATION**

OCTOBER 5, 2012

I. BACKGROUND

A. History and Mission of the Texas Forensic Science Commission

In May 2005, the Texas Legislature created the Texas Forensic Science Commission (“TFSC” or “Commission”) by passing House Bill 1068 (the “Act”). The Act amended the Code of Criminal Procedure to add Article 38.01, which describes the composition and authority of the TFSC. *See* Act of May 30, 2005, 79th Leg., R.S., ch. 1224, § 1, 2005. The Act took effect on September 1, 2005. *Id.* at § 23.

The Act requires the TFSC to “investigate, in a timely manner, any allegation of professional negligence or misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by an accredited laboratory, facility or entity.” TEX. CODE CRIM. PROC. art. 38.01 § 4(a)(3). The Act also requires the TFSC to develop and implement a reporting system through which accredited laboratories, facilities, or entities may report professional negligence or misconduct, *and* require all laboratories, facilities, or entities that conduct forensic analyses to report professional negligence or misconduct to the Commission. *Id.* at § 4(a)(1)-(2).

The term “forensic analysis” is defined as a medical, chemical, toxicological, ballistic, or other examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action. *Id.* at art. 38.35(4). The statute excludes certain types of analyses from the “forensic analysis” definition, such as latent fingerprint analysis, a breath test specimen, and the portion of an autopsy conducted by a medical examiner or licensed physician.¹

¹ For complete list of statutory exclusions, *see* TEX. CODE CRIM. PROC. art. 38.35(a)(4)(A)-(F) & (f).

The statute does not define the terms “professional negligence” and “professional misconduct,” though the Commission has defined those terms in its policies and procedures. (TFSC Policies & Procedures at 1.2.) The Commission also released additional guidance for accredited crime laboratories regarding the categories of nonconformance that may require mandatory self-reporting; this guidance is provided with the self-disclosure form located on the Commission’s website at <http://www.fsc.state.tx.us/documents/LABD.pdf>.

The FSC has nine members—four appointed by the Governor, three by the Lieutenant Governor and two by the Attorney General. *Id.* at art. 38.01 § 3. Seven of the nine commissioners are scientists and two are attorneys (one prosecutor and one criminal defense attorney). *Id.* The TFSC’s presiding officer is designated by the Governor. *Id.* at § 3(c).

The TFSC’s policies and procedures set forth the process by which it determines whether to accept a complaint, as well as the process used to conduct an investigation once a complaint is accepted. (See TFSC Policies & Procedures at § 3.0, 4.0.) The ultimate result of an investigation is the issuance of a final report. *Id.*

B. Attorney General Opinion No. GA-0866

On January 28, 2011, the Commission asked Texas Attorney General Greg Abbott to respond to three questions regarding the scope of its jurisdiction under its enabling statute (TEX. CODE CRIM. PROC., art. 38.01). Interested parties submitted briefs on the legal issues contained in the opinion request. On July 29, 2011, the Attorney General issued the following legal guidance:

1. The TFSC lacks authority to take any action with respect to evidence tested or offered into evidence before September 1, 2005. Though the TFSC has general authority to investigate allegations arising from incidents that occurred prior to September 1, 2005, it is prohibited, in the course of any such investigation, from considering or evaluating evidence that was tested or offered into evidence before that date.

2. The TFSC's investigative authority is limited to laboratories, facilities, or entities that were accredited by the Texas Department of Public Safety ("DPS") at the time the analysis took place.
3. The Commission may investigate a field of forensic science that is neither expressly included nor expressly excluded on DPS' list of accredited forensic disciplines, as long as the forensic field meets the statute's definition of "forensic analysis" (*See* Article 38.35 of the Act) and the other statutory requirements are satisfied.

The Commission's review of the Austin Police Department Crime Laboratory ("APDCL") complaint falls within its statutory jurisdiction as set forth in the Opinion for the following reasons: (1) the forensic analyses under review occurred after the effective date of the Act; (2) APDCL is accredited by DPS; and (3) controlled substance analysis is a DPS-accredited forensic discipline. Any subset of allegations made within the broader APDCL complaint falling outside the scope of the Commission's jurisdiction are noted herein.

C. Limitations of this Report

No finding contained herein constitutes a comment upon the guilt or innocence of any individual. A final report by the TFSC is not *prima facie* evidence of the information or findings contained in the report. TEX. CODE CRIM. PROC. art. 38.01 § 4 (e); FSC Policies and Procedures § 4.0 (d). The Commission does not have enforcement or rulemaking authority under its statute. The information it receives during any investigation is dependent upon the willingness of concerned parties to submit relevant documents and respond to questions posed. The information gathered has not been subjected to the standards for admission of evidence in a courtroom. For example, no individual testified under oath, was limited by either the Texas or Federal Rules of Evidence (*e.g.*, against the admission of hearsay) or was subjected to formal cross-examination under the supervision of a judge. The primary purpose of this report is to encourage the development of forensic science in Texas.

II. SUMMARY OF COMPLAINT AND KEY FACTS

A. Complaint History

The complaints in this case are related to concerns raised by two parties regarding the integrity and reliability of the forensic analysis performed by the drug chemistry section of the Austin Police Department Crime Laboratory (“APDCL”). The first complaint was submitted by Debra Stephens, a former employee of the drug chemistry section of the Austin Police Department Crime Laboratory (“APDCL”) and the second by Integrated Forensic Laboratories, Inc. (“IFL”) a private accredited laboratory in Euless, Texas that worked three cases for defense counsel behind the APDCL. Because the complaints involve concerns regarding the same forensic discipline in the laboratory, the Commission consolidated them for purposes of this report. However, the issues raised by Ms. Stephens are independent from concerns raised by IFL. Each complaint is reviewed in turn below.

1. Complaint Filed by Debra Stephens

On December 27, 2011, Debra Stephens, a former employee in the drug chemistry section of the APDCL, submitted a letter to Travis County District Attorney Rosemary Lehmberg, in which she raised significant concerns about APD controlled substance cases “being analyzed without regard to proper laboratory procedures and without regard to policies required under the accreditation inspection guidelines.” In the letter, Ms. Stephens cited 23 specific cases in which she alleged results were issued without regard to laboratory procedure. (See **Exhibit A.**)

Ms. Stephens previously filed a complaint with the Commission in April 2011, outlining various broad-based quality concerns and personnel issues, which she argued led to her wrongful termination. On September 8, 2011, the Commission dismissed Ms. Stephens’

original complaint because it did not specify an allegation of negligence or misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by the laboratory, as required by the Commission's enabling statute.

On January 13, 2012, the Commission voted to re-open Complaint #11-07, in light of the new information submitted by the complainant to the Travis County District Attorney in December 2011. On March 9, 2012, Ms. Stephens submitted an additional letter describing concerns regarding the laboratory, including allegations regarding laboratory security and alleged cheating on a proficiency exam. (See **Exhibit B.**) On February 28, 2012, she submitted responses to a DPS audit and statements made by the APDCL manager during a TFSC Complaint Screening Committee meeting. (See **Exhibit C.**) The Commission also solicited feedback from the APDCL regarding the allegations filed by Ms. Stephens. (See **Exhibit D.**)

2. Complaint Filed by IFL Laboratories, Inc.

In February 2012, Commission staff received a copy of an email sent by IFL to ASCLD-LAB Executive Director Ralph Keaton raising serious concerns regarding court-ordered re-testing of three APD controlled substance cases. (See **Exhibit E.**) Commission staff requested that IFL submit a complaint form so the issues raised could be reviewed formally by the Commission. IFL submitted a complaint form on February 8, 2012. IFL was hired by defense counsel in three cases to conduct independent testing of controlled substance evidence worked by the APD lab. IFL expressed the following concerns regarding the three cases:

(1) *Crack cocaine case* (IFL 1108165/APD L10-12068): IFL alleged that APDCL's results were inconsistent with previous results reported by the laboratory and also

inconsistent with results reported by IFL. IFL also expressed concern that APDCL did not appear to have conducted an investigation when a significant difference in weight was noted from initial testing in October 2010 to subsequent testing in August 2011. IFL expressed doubt that a 42% reduction in evidence weight could be attributable to degradation of the sample over time, specifically the breakdown of cocaine base to benzoylecgonine.

(2) Marihuana/Tetrahydrocannabinols case (IFL Case # 1111143/APD #L-1013202):

Immediately after finishing the crack cocaine case, IFL received another case reported by APDCL. The lab reported the evidence as material other than marihuana containing tetrahydrocannabinols. In Texas, this category is a PG1 group and carries a stiffer penalty compared to marihuana, a PG3 group. On re-examination of this case, IFL determined the material was comprised almost entirely of cystolithic trichomes, non-cystolithic trichomes, and glandular trichomes. IFL raised concerns regarding the discrepancy between reporting “marihuana” vs. “material other than marihuana containing tetrahydrocannabinols.” Initially, IFL was concerned the discrepant results indicated the material may not have been properly examined by APDCL. After learning about differences in the way crime laboratories in Texas report material with these characteristics (differences not attributable to laboratory error), IFL asked the Commission for guidance and further clarification regarding the two categories to encourage consistency from laboratory to laboratory across Texas.

(3) IFL Case #XXXXXXX (redacted case number/pending criminal case): IFL received a court-ordered request to re-weigh a large number of MDMA tablets. However, APDCL cut the tablets in half and sent only half of the tablets to IFL. APDCL claims standard operating procedure was to retain half of the exhibit, in case there is a disagreement with the defense laboratory regarding results. IFL asserted this was inconsistent with the

court order and the prior practice of APDCL, and IFL was unable re-weigh the tablets per the court order because only half of the evidence was sent.

On April 13, 2012, the Commission voted to include the IFL concerns in its review of Ms. Stephens' complaint. APDCL submitted a response to IFL's allegations on February 15, 2012. (See **Exhibit F**.)

III. INVESTIGATIVE ACTIVITIES

Due to the potentially serious nature of the allegations raised in this complaint, this investigation involved the Department of Public Safety and the TFSC at the state level, as well as ASCLD-LAB, the APDCL's national accrediting body. Involvement by DPS was limited to an initial audit of documentation for the 23 cases cited by Ms. Stephens in her complaint, though the TFSC kept DPS apprised of further investigative work due to DPS' role as the statewide accrediting authority for APDCL. The TFSC and ASCLD-LAB conducted independent investigations of the APDCL because the objectives of ASCLD-LAB and the TFSC are distinct. While ASCLD-LAB focuses on measuring APDCL compliance with its own standard operating procedures and applicable accreditation standards, the TFSC is charged with reviewing and assessing allegations of negligence and misconduct, and recommending re-analysis and corrective action as necessary to ensure the public trust in the integrity and reliability of work performed by the APDCL. To minimize disruption in the laboratory, the TFSC and ASCLD-LAB conducted on-site interviews of analysts and lab management during the same two-day window from June 7-8, 2012.

A. Initial Review: DPS Audit of Cases Raised in Stephens Complaint

In January 2011, Travis County Assistant District Attorney Buddy Meyer asked the Deputy Director of the Department of Public Safety to conduct an audit of the 23 cases cited

by Ms. Stephens in her complaint. DPS complied with the request. On January 30, 2012, Deputy Director Pat Johnson issued a final report for these cases. (See **Exhibit G.**)

The scope of DPS' review was limited to examination of documents contained in the case file to ensure the data supported the conclusions reached in the laboratory reports. DPS concluded that the preliminary results were supported by subsequent laboratory testing in all but one case. The exception was case L-1000034, in which the compound originally reported to the officer (quetiapine) was determined in supplemental testing not to be present. *Id.* However, this compound was not a controlled substance and therefore did not impact the outcome of the criminal case.

However, of the 23 cases examined, there were seven in which the preliminary results were issued to the officer but not recorded in the lab's electronic system (LIMS) until after the report was issued. Handwritten notes used to conduct the preliminary testing in this group of cases were disposed of once the data was entered in the LIMS and thus are not available in the case file.

Of the 23 cases, five involved marihuana samples (L-0900075, L-0900078, L-0905372, L-1001182, L-1001185), one involved cocaine (items #1-10 on case L-10001183) and one involved phencyclidine (L-1006342).

In all other cases, either the data was entered into the LIMS before preliminary results were issued to the officer or the GC/MS run shows the instrumental analysis was performed before the preliminary results were issued to the officer.

DPS also noted that in eight of the cases, while sufficient analytical data was recorded before release of preliminary results, the weights of the exhibits on which the preliminary

results were issued were not recorded in the LIMS until after the preliminary results were released.

DPS concluded that for cases in which preliminary results and weights were issued to the officer but not recorded until later, the lab did not meet ASCLD-LAB Legacy accreditation standard 1.4.2.16 requiring the generation and maintenance of records to support conclusions.

On October 15, 2010, the APD crime lab officially suspended the practice of providing preliminary results to officers. The practice occurred over a two-year period from 2008-2010, and involved 534 cases. (*See Exhibit D.*)

B. TFSC Investigation

1. Statutory Requirement for Written Report

An investigation under the TFSC's enabling statute "must include the preparation of a written report that identifies and also describes the methods and procedures used to identify: (A) the alleged negligence or misconduct; (B) whether the negligence or misconduct occurred; and (C) any corrective action required of the laboratory, facility, or entity." TEX. CODE CRIM. PROC. Art. 38.091 at 4(a)(3)(b)(1). A TFSC investigation may include one or more: (A) retrospective reexaminations of other forensic analyses conducted by the laboratory, facility, or entity that may involve the same kind of negligence or misconduct; and (B) follow-up evaluations of the laboratory, facility, or entity to review: (i) the implementation of any corrective action required . . . ; or (ii) the conclusion of any retrospective reexamination under paragraph (A). *Id.* at 4(a)(3)(b)(2).

2. TFSC Investigative Methods and Procedures

In accordance with TFSC Policies and Procedures §4.0, after the TFSC votes to accept a complaint for investigation, the TFSC Chair nominates three Commissioners to an investigative panel subject to the approval of the full TFSC. The panel coordinates the complaint investigation. At the TFSC's April 13, 2012 quarterly meeting, members voted to establish an investigative panel for the APD disclosure consisting of Mr. Richard Alpert (Chair), Dr. Jeffrey Barnard, and Dr. Jean Hampton.

The TFSC's investigation consisted of four main phases: (1) document collection; (2) document review; (3) interviews of the complainant, laboratory personnel and management; and (4) retrospective re-examination of evidence. Commission staff also consulted extensively with the Executive Director of ASCLD-LAB and the Deputy Assistant Director of DPS, and maintained periodic contact with the Travis County District Attorney's Office and the complainant.

a. Document Collection and Review

Commission staff began collecting and reviewing documents in December 2011. The APDCL was responsive and provided requested documents in a timely manner. From December 2011 to the writing of this report, Commission staff reviewed thousands of pages of documents provided by APDCL, the complainants (Ms. Stephens and IFL) and DPS, and made numerous follow-up inquiries to documents received.

b. Interviews of Complainant, APDCL Analysts and Management

On May 11, 2012, Commission General Counsel Lynn Robitaille and Commission Coordinator Leigh Tomlin met with the complainant, Debra Stephens, to review the substance of her complaint. This meeting assisted staff in preparing a list of questions for the

on-site interviews, and provided the complainant with an opportunity to explain her concerns in greater detail.

On June 7-8, 2012, Commissioner Richard Alpert, General Counsel Lynn Robitaille and Patti Williams, a controlled substance subject-matter expert and case manager from ASCLD-LAB, traveled to the APDCL to meet with analysts and management regarding the issues raised by the complaints. The investigative team toured the laboratory, conducted interviews with each analyst, and spent extensive time reviewing cases at random in LIMS. Observations from the site visit are discussed in detail below. The team met with the following employees during the course of the two days: Lab Manager William Gibbens, Quality Manager Tony Arnold, Section Supervisor Gloria Rodriguez; Senior Analyst Glen Harbison; Analyst Ralph Salazar; Analyst Chris Kiyak; Analyst Quynh Nguyen; and Analyst Katherine Sanchez.

c. Case Re-Examination by NMS Labs

At the April 13, 2012 meeting, the Commission determined the most prudent course of action would be to re-test evidence in the 23 cases cited by Ms. Stephens in her complaint. After the meeting, the APDCL investigative panel researched various options for re-testing the evidence. DPS Deputy Director Pat Johnson requested that DPS *not* be sent the evidence because the agency is overloaded with other cases. The panel then sought the assistance of the United States Drug Enforcement Agency's ("DEA") Southwestern regional lab in Dallas. Though the laboratory director was extremely receptive to assisting the Commission, he was required to consult his supervisors at DEA headquarters in Washington, D.C. The DEA Chief Counsel's Office denied the Commission's request for assistance with re-testing, citing a general policy against performing such services. Commission staff requested a letter from

the Chief Counsel's Office that would explain the policy, but were informed that a letter would not be provided.

The panel then researched other laboratories on the DPS accreditation list and determined that NMS Labs in Willow Grove, Pennsylvania would be a strong choice due to the timeliness with which it is able to conduct re-testing and its independent location outside of Texas. APDCL agreed with this approach and APD leadership agreed to pay for the re-testing. The Travis County District Attorney's Office also supported re-testing. NMS Labs re-tested all non-marihuana evidence in the cases cited by Ms. Stephens in her complaint. *In every case, the re-testing confirmed the identification of the controlled substance(s) originally reported. (See Exhibit H.)*

3. ASCLD-LAB Investigation

ASCLD-LAB conducted investigations of both the Stephens and IFL complaints. As stated above, the June 7-8, 2012 onsite visit by the Commission was conducted collaboratively with Patti Williams, the ASCLD-LAB case manager assigned to the investigation. Ms. Williams released two reports to the ASCLD-LAB Board addressing the IFL and Stephens complaints, respectively.

The Executive Director of ASCLD-LAB released a report addressing issues raised by IFL on June 1, 2012. (See **Exhibit I.**) The Board concluded the following:

- (1) With respect to IFL's concerns regarding the crack cocaine case, the differences reported by the analysts are explainable but were not appropriately detailed in the case file documentation.

- (2) With respect to the “marihuana” vs. “tetrahydrocannabinols” analysis discrepancy, the ASCLD-LAB Board concluded the analyst did not sufficiently document the observations made during examination so that a subsequent examiner could follow the rationale used to reach the conclusion stated in the report. The Board also noted there may be a need for legal clarification as to what constitutes marihuana and/or tetrahydrocannabinols in Texas.
- (3) With respect to the third allegation, the Board concluded that compliance (or lack thereof) with a court order is a legal interpretation issue and does not fall within the purview of ASCLD-LAB.

On July 24, 2012, the ASCLD-LAB Executive Director issued a draft report addressing issues raised by Ms. Stephens. (See **Exhibit J**.) On October 4, 2012, the ASCLD-LAB Board finalized the draft report and closed its investigation. The report concluded that the APDCL’s prior practice—suspended in October 2010—of discarding handwritten notes generated during preliminary testing after entry of the information into the LIMS system, failed to comply with the requirements of criterion 1.4.2.16 of the ASCLD-LAB Legacy program. However, the Board concluded that the allegations raised by Ms. Stephens regarding erroneous results leading to false filing of charges by detectives and prosecutors, as well as allegations that results were released to law enforcement without appropriate examination and supporting data, were without merit. Though the Board concluded these allegations were without merit, Ms. Williams prepared a document for the laboratory entitled “Opportunities for Improvement,” highlighting various areas in which the laboratory can improve its procedures and documentation. In addition, the ASCLD-LAB Board requested that APDCL provide a random sampling of case files in other forensic disciplines to ensure the suspended preliminary result practice discussed herein does not exist in other disciplines.

IV. TFSC OBSERVATIONS

A. Complaint Filed by Debra Stephens

The Commission's site visit on June 7-8, 2012 focused primarily on the allegations cited in Ms. Stephens' complaint, including the subsequent letter she sent on March 9, 2012 raising concerns regarding laboratory security, alleged cheating on a proficiency exam and the erroneous quetiapine result identified by DPS during its audit. A summary of observations made by the Commission is set forth below.

As a threshold matter, TFSC investigative team found the APDCL drug section analysts to be credible, open and forthcoming throughout the course of the site visit. Management was also cooperative, providing unfettered access to the LIMS system for random audits and tracking down follow-up information to every request made by either the TFSC or ASCLD-LAB. Management stated on numerous occasions that they welcomed the visit because it gave them the opportunity to learn and to make improvements. When ASCLD-LAB or the TFSC pointed out non-conformances or concerns regarding issues cited in Ms. Stephens' complaint, management was receptive and took responsibility for the issues.

The subject areas discussed below emerged during the course of the on-site interviews. Though they do not rise to the level of negligence or misconduct as defined in the Commission's policies and procedures, in some cases they constitute ASCLD-LAB non-conformances, and in all cases they represent opportunities for improvement in the laboratory.

1. Discarding Notes From Rush Cases

From 2008-2010, the APDCL drug chemistry section engaged in a practice of communicating rush results to officers on weekends when information was needed immediately to file charges pursuant to statutory requirements in misdemeanor and felony cases. During this period, the APDCL did not have a documented procedure regarding the minimum data needed to release preliminary results, methods for communicating those results, or the retention of documentation used during the process of generating the results. Standard operating procedures simply provided that preliminary reports may be administratively reviewed by the analyst if stated explicitly in the preliminary report. Analysts followed a one-page preliminary result template containing the drug's identity and weight. The template was issued to the requesting officer until a final report was generated in the LIMS system. The Travis County District Attorney's office did not receive these preliminary results, and thus took no action based on them.

After issuing the preliminary report in a rush case, the analyst would return to work (typically on a Monday) and conduct the remaining required testing before issuing a final report. The final case record typically includes (as applicable) the preliminary result, a matrix worksheet (describing evidence, weights, color test results, instrumental techniques and conclusions) data generated by the instrument, laboratory reports and documentation of technical and administrative review.

During interviews, it was clear that before APDCL suspended the policy of issuing draft reports to officers in rush cases in October 2010, a senior APDCL analyst engaged in the practice of writing results down at the time he conducted a rush analysis and throwing his notes away after entering the information into the LIMS system later in the week. A review

of LIMS data for each case cited by Ms. Stephens in her complaint indicated this practice was isolated to one currently employed analyst. He is the most senior analyst in the laboratory apart from the section supervisor, and he was often called in to perform rush analyses on weekend. When asked why he would throw his notes away, he explained it was a “bad habit” he had developed during the transition to a paperless system, but he understands why it is a violation of ASCLD-LAB Legacy standard 1.4.2.16 and no longer engages in this practice. He also explained that for a period of time, analysts who worked rush cases on weekends did not receive any overtime pay. They typically performed the minimum amount of testing required to feel comfortable issuing a result to an officer, leaving the remaining confirmatory analyses for the following workweek.

As previously stated, the discarding of notes taken in rush cases upon entering information in the LIMS violated standard 1.4.2.16 of the ASCLD-LAB Legacy Program. While the analyst’s explanation may be an honest description of the laboratory environment at the time, it is not an adequate justification for the APDCL’s failure to comply with the ASCLD-LAB Legacy standard. A discussion of the Commission’s deliberations regarding alleged professional negligence as applied to these facts is set forth below.

2. Substitution of Laboratory Standards for Actual Evidence

One of the points made by the Ms. Stephens was that the analyst who threw his notes away also had access to the locked drug standards and could have used those standards in rush cases for which he was unable to make a positive identification. The investigative team asked every analyst whether there was any indication of this behavior at any point during the analyst’s tenure. Each analyst vehemently (and credibly) denied they would ever pull from a drug standard to make a positive identification. Results from NMS re-testing support the

assertion that drug standards were not used, since each piece of evidence tested was confirmed as consistent with the original APDCL report.

When asked whether officers ever pressure analysts to achieve certain test results, the analysts admitted they occasionally receive pressure and/or criticism from police investigators when the lab results do not turn out the way the investigator had hoped. Analysts consistently stated this dynamic arises about once or twice per year. However, each analyst was firm in his or her resolve not to be swayed by pressure from law enforcement. They also felt laboratory management supports them in resisting pressure on those rare occasions. The Commission emphasizes the importance of independence in any crime laboratory setting. As set forth in ASCLD-LAB's *Guiding Principles of Professional Responsibility for Crime Laboratories and Forensic Scientists*, forensic analysis must be based on "the evidence and reference material relevant to the evidence, not on extraneous information, political pressure, or other outside influences." (See **Exhibit L** at 31.)

3. Technical Review

While reviewing various cases in LIMS, the investigative team noticed the senior analyst referenced above had performed technical review on some of his own cases. Ms. Williams noted to management that this constitutes a non-conformance under ASCLD-LAB standards. The investigative team asked the quality manager why the LIMS permits an analyst to tech review his own cases. He explained there is a function in the system to prevent this but the lab disabled it to accommodate the review process in the DNA section, where each analyst is required to conduct a review of his or her own case in addition to review by another qualified analyst. As a result of this observation, APDCL management worked with the LIMS provider to remedy the issue within the LIMS system. All cases in

which the analyst performed his own technical review were re-reviewed by other analysts. It is important to note that APDCL policy only requires technical review in 75% of cases, and the laboratory met that threshold notwithstanding the non-conformances described here

4. Proficiency Test

One of the complaints noted by Ms. Stephens in her March 9, 2012 correspondence is that an analyst in the laboratory was allowed to change the results of her proficiency test after having submitted the test to the section supervisor. The analyst is no longer employed by the laboratory. During on site interviews, the section supervisor explained the analyst requested her test back before either administrative review or technical review had been completed. Because neither review had been completed, the supervisor was not concerned by the request. She provided the case folder back to the analyst but not the test sample.

After reviewing the audit trail for the test, it appears the analyst did change her proficiency test result. The correct answer for the test was “no controlled substances” for one sample and “hydrocodone” for the second sample. On May 14, 2010, the analyst initially submitted results indicating “no controlled substance” for both samples. The analyst released a final report for the proficiency test in question on May 26, 2010. In that final report, she changed the result for one of the test samples from “no controlled substance” to “hydrocodone.”

ASCLD-LAB reviewed APDCL policies and procedures related to proficiency testing. Though the procedure does not state that independent analysis is a responsibility of each examiner during proficiency testing, analysts all expressed their understanding that proficiency tests should be worked independently. Every examiner denied providing assistance to the examiner in question or speaking with the examiner in question regarding

the proficiency test. ASCLD-LAB concluded that laboratory procedure does not prohibit changes to proficiency exam results before technical and administrative review, as occurred in this situation. Because this allegation is beyond the scope of the Commission's jurisdiction as set forth in the Attorney General's Opinion, the Commission refers readers to pages 7-8 of ASCLD-LAB's report at **Exhibit J** for additional information.

5. Incorrect Preliminary Results Identified by DPS Audit

As stated above, DPS noted an error in the issuance of preliminary results for one non-controlled substance (quetiapine) in case L10-00034. Quetiapine was erroneously identified by the analyst as a result of carryover from a case sample previously run by another analyst. The analyst informed the supervisor of the issue, and the error was communicated to the officer on January 6, 2010. Evidence in the case file demonstrates the examiner documented the sequence of events appropriately, informed her supervisor, notified the office and retained appropriate records. The analyst recalled the case in question during the interview and explained the process she engaged in to correct the error, inform her supervisor and the officer who submitted the evidence for testing. In its report, ASCLD-LAB observed that the laboratory missed an opportunity to use the event to create awareness about the challenges of analyzing quetiapine and its retention on the instrument (*See Exhibit J* at 8-10.)

6. Laboratory Security Policy Concerns

In her March 9, 2012 letter, Ms. Stephens described an incident in 2010 in which the APDCL's Quality Manager used another analyst's key to gain access to the drug chemistry section. While the Quality Manager was authorized to access the area, he did not have a personal key card for the section at the time (this issue has since been remedied). Employees

are responsible for maintaining access cards in a secure manager; using a fellow employee's access card is prohibited under APDCL policy. The Commission refers readers to page 6-7 of ASCLD-LAB's report at **Exhibit J**, as this allegation is beyond the scope of the Commission's jurisdiction as set forth in the Attorney General's Opinion.

7. Analyst Storage of Old Samples

Another allegation by Ms. Stephens is that one of the analysts stored samples of drugs that were received by the lab over the years in his personal work area. The analyst admitted this was true but it happened years ago (around 2002). He would collect unusual samples he had been given during a period when he worked for the county medical examiner. At one point before the laboratory moved into its new facility, he and the quality manager boxed the samples and sent them to evidence destruction. There is no documentation regarding the disposal. Ms. Williams agreed this was a somewhat common practice in laboratories before accreditation, but that today it would be unacceptable. This incident falls outside the scope of the Commission's jurisdiction as it occurred before September 1, 2005.

8. Strengthening of Case File Documentation

Throughout the course of the two-day visit it was apparent that though APDCL examiners were competent, credible and performed forensic analyses that met expected standards of the discipline, case file documentation and/or standard operating procedure did not always adequately explain in written form the rationales used for making certain determinations. One example is in the case of marihuana analysis, as outlined in detail by ASCLD-LAB in its report. (See **Exhibit I** at pages 10-11.) The investigative team emphasized the fact that as APDCL transitions to ISO accreditation, attention to detail will

become even more important. Management agreed and expressed their willingness to make the necessary improvements.

B. IFL Complaint

1. Crack Cocaine Case

The first IFL allegation related to a discrepancy in the results of a forensic analysis performed on crack cocaine. On October 7, 2010, an APDCL analyst generated a report on a substance described as “off-white rocks” with the result being cocaine, 15.24 grams net. The case notes referred to the rocks as “moist.” The evidence was stored in the APD property room from November 2010 until August 9, 2011. On August 9, 2011, the evidence was pulled for viewing by defense counsel. At that point, the evidence previously described as “off-white rocks” had turned into “brown liquid sludge.” Defense counsel and the Travis County District Attorney’s office agreed to a re-analysis by APDCL. A second analyst generated a report indicating the presence of benzoylecgonine, 8.65 grams (42% less than what was previously reported.) The case notes of the second analyst clearly document the presence of both benzoylecgonine and cocaine, but only benzoylecgonine was reported. Defense counsel then requested re-testing by IFL. On September 12, 2011, IFL generated a report with the result being cocaine, 4.90 grams.

IFL was concerned that cocaine was not reported by APDCL after the second test. IFL was also concerned that APDCL did not appear to investigate the loss in weight of the evidence from October 2010 to August 2011.

As ASCLD-LAB stated in its report (*See Exhibit I*), “reference literature and Technical Advisory Committee input support that cocaine base will break down to benzoylecgonine and the exiting moistness may have accelerated the breakdown. Though

the second analyst reported benzoylecognine only, he clearly documented the presence of cocaine in the case file. He was not tasked with a special request such as ‘confirm the presence of cocaine,’ and his testing proceeded with the analytical scheme used for normal casework.” Commissioners agree that the reference literature supports the breakdown of crack cocaine into benzoylecognine, resulting in a potentially dramatic loss in weight in some circumstances. The likelihood of weight loss is enhanced if the sample is moist, as was the situation in this case. (*Id.*)

APDCL did not have sufficient detail in the case file to describe the discrepancy between the original report (positive for cocaine) and the second report (positive for benzoylecognine) or to describe the loss in weight from the first test to the second. This is an example of an area in which APDCL can make improvements in case documentation, so that a subsequent examiner who picks up the case folder understands the rationale employed.

2. Marihuana/Tetrahydrocannabinols Case

IFL’s second allegation relates to a discrepancy between the reporting of a piece of evidence as “tetrahydrocannabinols” by APDCL and “marihuana” by IFL. ASCLD-LAB concluded the APDCL analyst did not sufficiently document observations made during the examination of the sample in question to allow another analyst to know what had been observed as required by ASCLD-LAB Legacy standard 1.4.2.16. ASCLD-LAB also concluded that APDCL procedures, at the time of the original analysis, did not clearly specify the minimum requirements needed to report “tetrahydrocannabinols” vs. “marihuana.”

Representatives from the ASCLD-LAB Technical Advisory Committee noted this particular analysis is becoming more difficult as examiners are faced with distinguishing between synthetic tetrahydrocannabinols and plant tetrahydrocannabinols. Guidelines for classifying marihuana in Texas are found in Title 6, Subtitle C, Chapter 481, Subchapter A, Section 481.002 of the Health and Safety Code. (See **Exhibit K**.)

ASCLD-LAB believes there may be a need for legal clarification as to what constitutes marihuana under Texas law, but did not feel it was appropriate for the accrediting body to determine where the line should be drawn. Commission staff also consulted with DPS on the issue, and the DPS Quality Manager suggested that it would be worthwhile to convene a task force to look at standardizing the criteria for distinguishing between “tetrahydrocannabinols” and “marihuana” in Texas. Such standardization would contribute to a more even-handed application of penalties in Texas. The Commission discusses establishment of a task force on this issue in the recommendation section below.

3. MDMA Court Order

IFL’s final concern involved a perceived failure by APDCL to follow a court order instructing that MDMA tablets be released from APDCL to IFL for re-weighing. APDCL cut the tablets in half before sending them to IFL, which made it difficult for IFL to determine the weight of the evidence. The court order states, in pertinent part: “For purposes of testing and making a quantitative and qualitative analysis for the percent composition and total weight of actual substance, the Travis Co. D.A.’s Office through its agents . . . delivery to IFL of: The alleged controlled substances” APDCL’s position is that when possible, the lab withholds a portion of the evidence in case questions arise later. Though APDCL will release an entire sample when necessary (such as in the case of the brown liquid sludge crack

cocaine degradation) its preference is to retain some of the sample wherever possible. There is disagreement between the parties regarding interpretation of the court order. The interpretation of a court order falls outside the scope of the Commission's jurisdiction as described in the Attorney General Opinion discussed above.

V. NEGLIGENCE/MISCONDUCT ANALYSIS

The Commission's enabling statute requires it to investigate, in a timely manner, any allegation of professional negligence or misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by an accredited laboratory, facility, or entity. TEX. CODE CRIM. PROC. art. 38.01 § 4(a)(3). The term "forensic analysis" means a "medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action. *Id.* at 38.35 (a)(4).

While the terms "professional negligence" and "professional misconduct" are not defined in the statute, the Commission has defined these terms in its policies and procedures, as follows:

"Professional Misconduct" means, after considering all of the circumstances from the actor's standpoint, the actor, through a material act or omission, deliberately failed to follow the standard of practice generally accepted at the time of the forensic analysis that an ordinary forensic professional or entity would have exercised, and the deliberate act or omission substantially affected the integrity of the results of a forensic analysis. An act or omission was deliberate if the actor was aware of and consciously disregarded an accepted standard of practice required for a forensic analysis." (TFSC Policies & Procedures at 1.2.)

"Professional Negligence" means, after considering all of the circumstances from the actor's standpoint, the actor, through a material act or omission, negligently failed to follow the standard of practice generally accepted at the time of the forensic analysis that an ordinary forensic professional or entity would have exercised, and the negligent act or omission substantially affected the integrity of the results of a forensic analysis. An act or omission was

negligent if the actor should have been but was not aware of an accepted standard of practice required for a forensic analysis.” (TFSC Policies & Procedures at 1.2.)

At its July 27, 2012 meeting, the Commission deliberated regarding a finding of negligence or misconduct before instructing staff to draft a report. Commissioners agreed the site visit and case file review did not reveal any evidence of professional misconduct as the term is defined in the Commission’s policies and procedures. The one issue within the Commission’s jurisdiction that could rise to the level of professional negligence was the discarding of notes by an analyst in rush cases. However, for negligence to be found, that act must “substantially affect the integrity of the results of a forensic analysis,” as the term is defined in the statute. Because the NMS re-testing confirmed the results of the APDCL reports, and no report (preliminary or otherwise) was issued externally containing incorrect information (or information that would otherwise impact the report’s integrity) Commissioners concluded the practice does not meet the definition of professional negligence. However, the Commission recognizes that the practice of discarding notes, (regardless of whether the notes are subsequently entered into a laboratory’s electronic case management system) does not constitute “best practice” in the forensic discipline. The Commission strongly discourages forensic practitioners in Texas from engaging in this practice under any circumstances.

VI. INVOLVEMENT OF TRAVIS COUNTY D.A. AND DEFENSE BAR

The Commission stresses the importance of crime laboratory communication with affected district attorneys and law enforcement agencies when concerns arise such as those described in this report. In this case, the Travis County District Attorney posted information about the complaints on the local defense bar’s blog and contacted individual attorneys in

cases for which material concerns were raised. Throughout the course of the investigation, prosecutors in the Travis County District Attorney's office maintained close contact with the Commission, requesting periodic updates to ensure compliance with any disclosure obligations to defense counsel under *Brady v. Maryland* 373 U.S. 83 (1963). District attorneys must have sufficient information to understand the nature and scope of material nonconformances in a crime laboratory so they may evaluate and attend to their prosecutorial obligations properly. The Commission encourages all Texas crime laboratories to be transparent in communicating potential concerns to prosecuting authorities, so they may in turn take proactive steps to ensure compliance with *Brady* and any other applicable legal and/or professional obligations.

VII. RECOMMENDATIONS

1. The Commission recommends that APDCL implement all improvements suggested in the June 1, 2012 and July 24, 2012 ASCLD-LAB reports and accompanying "Opportunities for Improvement" document. To the extent any report or monitoring document is created to evidence APDCL's progress with these issues, the Commission requests a copy of such documentation.
2. To address the concerns raised by IFL regarding discrepancies in identifying "marihuana" vs. "tetrahydrocannabinols" from laboratory to laboratory across Texas, the Commission will work with DPS and the Texas Association of Crime Laboratory Directors to establish an advisory board to make recommendations on this issue. The Commission will also consult with the Texas District and County Attorneys' Association and the Texas Criminal Defense Lawyers' Association to encourage their involvement in this discussion.
3. The Commission requests that APDCL notify the Commission of the results of ASCLD-LAB's inquiry into whether any other sections of the laboratory observe a similar rush case policy as the policy suspended by the drug chemistry section in October 2010.
4. The Commission requests that any corrective action taken as a result of the inquiry described in #3 above be documented and reported to the Commission.

EXHIBIT A

DEBRA L. STEPHENS
1324 Bull Horn Loop
Round Rock, TX 78665
(512) 468-8286
stephendel@yahoo.com

December 27, 2011

Rosemary Lehmberg, District Attorney
Travis County Justice Center
509 W. 11th Street
Austin, Texas 78701

Ms. Lehmberg,

I am contacting you and your office to present evidence for your investigation. After several months of consideration, I have come to the conclusion that I should turn this information over to your office. I believe that scientific evidence should be accurate and reliable when used against defendants charged in criminal cases. I believe the documents I have attached will show that the Austin Police Department Crime Laboratory is not providing quality analyses and should not be relied upon for evidential testing.

Beginning in 2005, the Texas Legislature required that evidence presented in criminal courts in Texas must come from laboratories that have achieved some level of accreditation. The Austin Police Department Crime Laboratory was inspected in order to achieve this certification, in spite of the fact that the administrators of the laboratory did not possess the credentials required by inspectors. So from this point forward, the accredited laboratory was managed by non-scientists and un-qualified personnel. Not only did these administrators not meet the qualifications of federal investigators, but they also did not meet the qualifications of the City of Austin personnel policies. In promoting these individuals, police administrators did not follow proper procedures by posting these job openings or by interviewing any qualified candidates. And they did whatever they could to conceal this information.

The evidence I am providing to you documents that controlled substance analysis cases are being analyzed without regard to proper laboratory procedures and without regard to policies required under the accreditation inspection guidelines. Laboratory policies require that the evidence analyzed must be reviewed and approved prior to the dissemination of the laboratory reports (Exhibit #1). The case files I have attached show that these results are being reported and charges are being filed prior to any analysis being conducted at all (Exhibit #2). Not only does this violate laboratory policy, but it violates scientific methods at the most basic level. I believe that these unqualified police administrators have covered up this evidence when it was presented to quality control and quality assurance personnel. And these are not isolated cases. I have provided a list of cases I discovered that had been released in violation of these policies (Exhibit #3). I would estimate that there are hundreds of other cases dating back to 2005 that were analyzed without regard to laboratory protocols in "rush" case requests that I was unable to identify using my limited access to files in the database.

The danger of violating these procedures not only could result in the erroneous analysis of items of evidence, but the false conviction of individuals charged based on the results of these analyses. There appears to be a rush to report results. This could possibly lead to the falsification of results as there are no policies in place to verify these results by any re-analysis or internal quality control processes. In

addition, analysts could simply substitute analytical standards for analysis in order to produce data to substantiate the results that have already been reported. This unethical practice has been documented in several forensic laboratories where analysts are pressured to produce results and perform in quota-driven environments. I believe that these individuals should be identified and removed from the laboratory before they are identified in a courtroom setting.

Part of my decision in releasing these documents to your office came from my belief that this information could be uncovered by the defense community and brought into the courtroom to discredit these individuals and the whole Austin Police Department Crime Laboratory. I would prefer that your office be the first to uncover this evidence and handle it appropriately. I additionally believe that I was terminated from my employment with the Austin Police Department because I sought to bring these issues to light using the administrative process. I have included the results of my disciplinary hearings to show that this evidence has been recorded and could be made available for inspection (Exhibit #4). I believe that the administrators of the Austin Police Department Crime Laboratory also intend to violate the law (Texas Statute 724.018) in order to prevent the release of laboratory results to defense attorneys when it is legitimately requested.

In addition, I believe that the City of Austin conspired against me to withhold information that would have demonstrated and documented this conspiracy. In an open records request, I requested copies of all email correspondence sent or received by five individuals in the employment of the City of Austin (Rodriguez, Mannix, Paredes, Burton, and Gibbens) (Exhibit #5). However, I believe that several items were not released in a concerted attempt to thwart my ability to prove that I was being harassed, discriminated against, and my integrity attacked. All of these actions would limit their liability in any future civil proceedings. Evidence of this was discovered when I filed an open records request with the City of Pasadena, Texas and received correspondence not released by the City of Austin (Exhibit #6). I would like for your office to investigate these criminal activities and hold these individuals responsible for their actions. Not only was I terminated from my employment with the City of Austin, but I lost all health and retirement benefits amounting to more than \$3 million dollars by my estimate. I don't think these actions should be tolerated by any governmental entity under Texas Open Government Statute 552. I was informed by the Attorney General's Office that you would be the office to investigate these violations and hold the City of Austin and the Austin Police Department accountable for their actions.

In addition, the Austin Police Department continues to release the letter of termination written by Chief Acevedo (Exhibit #7), as if the allegations it contains are true when I have already proven through the administrative process that they are decidedly untrue. This constant attack on my character is unwarranted and harassing.

I am available to answer any further questions you might have.

Sincerely,

Debra L. Stephens

Debra L. Stephens
Senior Forensic Scientist

EXHIBIT B

DEBRA L. STEPHENS

March 9, 2012

Mr. Ralph Keaton, Executive Director
139 Technology Drive Ste J
Garner, NC 27529

Dear Mr. Keaton,

I would like to provide additional information I believe should be investigated related to the complaints filed against the Austin Police Department Crime Laboratory (APD). These violations of policy are very serious and affect the integrity of the laboratory operations and personnel employed at this laboratory. It is my understanding from Texas Forensic Science Commission Legal Counsel, Lynn Robitaille, that a ASCLD/LAB staff member has been assigned as Case Manager to the complaints you have received.

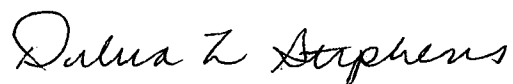
The first incident I observed while employed at APD, involves laboratory security. I observed and reported to Laboratory Manager, Billy Gibbens, that Quality Assurance Manager, Anthony Arnold had used another employee's security access card to gain admittance to the Controlled Substances Laboratory while no one else was working or present in the laboratory. This is a direct violation of laboratory security policy. Mr. Gibbens chose to take no corrective action or document this violation.

While working on a Controlled Substance Proficiency Sample, analyst Laura Carroll completed her analysis and turned in her report to Chemistry Section Supervisor, Gloria Rodriguez. Ms. Carroll then reviewed data collected by other analysts of this same sample and realized that her analysis was erroneous. She went to Ms. Rodriguez and asked to re-work the proficiency sample. Ms. Rodriguez allowed Ms. Carroll to re-analyze the sample and change her original report. Again, no corrective action was taken. Ms. Carroll continued to analyze casework samples without the benefit of any re-training. This is a perfect example of the cover-ups and mistakes occurring in the analyses conducted at this laboratory.

In laboratory case #L10-00034, analyst Katherine Sanchez released a preliminary analysis report that was in error. The error was corrected with re-analysis by a senior scientist (myself) and the charges that had been filed were dismissed. Again, no corrective action report was generated and no corrective action / re-training was provided to this analyst.

It is my sincere desire to see that the operations at the Austin Police Department be corrected and the administrators of the laboratory be held accountable for their actions. I believe that the citizens of Austin deserve no less.

Sincerely,



Debra L. Stephens

EXHIBIT C

DEBRA L. STEPHENS

February 2, 2012

Buddy Meyer
Assistant District Attorney
Travis County District Attorney's Office
P.O. Box 1748
Austin, TX, 78767

Dear Mr. Meyer:

I would like to respond to the letter Mr. D. Pat Johnson, Deputy Assistant Director of the DPS Crime Lab, wrote to you dated January 11, 2012. I received a copy of this letter through my attorney on February 1, 2012. Since his letter only focused on a few of the issues addressed in my original complaint, I will address only the responses offered in his letter.

In paragraph 4, concerning Question 1, Mr. Johnson points out that Austin PD lab has no written policy regarding preliminary reports. That is because, they were only to be used to report the full analysis results of specific items requested in "rush" cases and called "Draft Reports". Prior to becoming accredited in 2005, APD adopted the SWGDRUG requirements (Exhibit #1) for drug analysis, which defines the sufficient testing required before identifying controlled substances in evidential samples. No results were to be reported until this testing was completed. This is supported by the testimony of Drug Section Supervisor, Gloria Rodriguez, during the administrative hearing on June 20, 2011 (Exhibit #2, page 3, items #m and n), where she is reported to have testified that "It is highly irregular that Chris Kiyak, a Forensic Scientist at the lab, reported a result 9 days before he even analyzed the matter". And "It is highly irregular that Glenn Harbison, a Forensic Scientist at the lab, also reported a result 8 days before he even analyzed the evidence." Her own testimony about one of the cases she analyzed and one of the cases examined by Mr. Johnson, is also false. Examination of the data shows that she released results to a detective based solely on an ultraviolet spectroscopy scan, a Category C analytical technique under SWGDRUG guidelines, and before she had written the "draft" report, which is not sufficient under APD SOP's. Mr. Johnson concludes that "it was not possible to evaluate whether the analysts were meeting the requirements of that policy." He also reported that this is no longer the current practice, but does not qualify this statement with any date that this practice / policy went into effect.

In the next paragraph, he supports my findings when he reports that additional records were provided to him, but not part of the original case file. While he reports that "some" testing was conducted, he does not conclude that it was sufficient for reporting out the identification of the items analyzed.

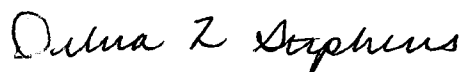
The second paragraph on page 2 concludes with "Analysts can only presume that those tests were performed on that date" and I believe that he concurs that the evidence fails to show that any testing did in fact actually take place. While instrumentation may have been taken out of service, it is common practice to backup data files and the data could easily have been retrieved if it really existed.

Related to question #2, APD preliminary reports are titled "Draft Reports". Email correspondence does not qualify as a preliminary report. As evidence of that, I have attached a directive from Chemistry Lab Section supervisor, Gloria Rodriguez, dated December 7, 2010. (Exhibit #3). Emails were sent only to inform the Detective that the results had been completed and the final results were available. No results were to be released until a full analysis had been conducted.

As to Questions 3 & 4, Mr. Johnson clearly states that "the Austin PD lab was not meeting all of the Legacy standard 1.4.2.17 for sufficiency of examination documents on the date preliminary results were issued." He also reports that "it is significant to note that the records show that final reports on all but one of the drug cases in the list provided . . .", indicating that he found errors in compliance with the work conducted at the APD lab. Nowhere in his letter does he endorse the work at APD or state that he has any confidence in their analyses.

In conclusion, I think that his report confirms that further investigation of the Austin Police Crime Laboratory is warranted and I recommend that it be undertaken by independent controlled substance proficient analysts.

Sincerely,

A handwritten signature in cursive script that reads "Debra L. Stephens". The signature is written in dark ink and is positioned above the printed name.

Debra L. Stephens

DEBRA L. STEPHENS

February 28, 2012

Dr. Arthur Eisenberg
Complaint Committee Chairman
Texas Forensic Science Commission

Dear Dr. Eisenberg,

I would like to respond to comments made at the last meeting of the Texas Forensic Science Commission Complaint Committee on February 10th, 2012. Please feel free to share my comments with other members of the committee for their consideration.

I would like to begin by addressing a key issue of the Standard Operating Procedures maintained by the Austin Police Department Crime Laboratory Quality Assurance Manager. No date or time stamps are attached digitally to revisions of policies. Therefore, it can never be identified and associated with any particular wording of policy or date of issuance. In prior testimony, Mr. Anthony Arnold stated that the SOP documents are not date or time stamped and are maintained as MS Word documents which simply contain a typewritten date in the header / footer, but is not considered an accurate date of the file's creation or used for documentation purposes. He alone can manipulate this information and store the files electronically in his computer.

In discussions at the committee meeting, Mr. Billy Gibbens, Laboratory Manager, provided information and statements that I found to be deceptive. I would like to offer clarification and discussion about several issues that were presented.

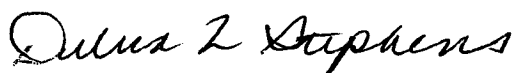
- 1.) He reported to you that "handwritten" notes in the Controlled Substance Section had been destroyed and that no other section of the laboratory scans any handwritten notes into the LIMS database. This is just not true. Many other sections utilize this procedure including the Crime Scene Section, the DNA section, the Latent Print Section, and the Ballistics Section. It is very common for diagrams and observations concerning items of evidence to be recorded by hand, scanned digitally, and attached to the electronic case file. These items contain information identifying the date they were created and document when they were observed.
- 2.) Mr. Gibbens reported to you that controlled substance cases were reported out in "preliminary reports" because there were problems transcribing the cases between the RMS and LIMS systems. I filed an open records request with the City of Austin to obtain records to demonstrate that this could not be true. Sadly, they have not been provided as of this date. The analysts had all the case information and laboratory numbers, indicating that the case files had been transcribed. Personnel

at the Police Department are available 24 / 7 to perform these duties and no controlled substance cases were received or analyzed prior to completion of this process. When I have received the items showing the chain of custody electronically received in the LIMS database, I will be happy to provide you with copies of this documentation.

- 3.) He told you that the weights of exhibits of evidence reported are entered "electronically". Perhaps he misunderstood your question, but I would like to clarify, that all weights are entered manually into the LIMS system by observation and typewritten by the analyst. There is no electronic connection between the scales utilized and the LIMS system database. The Quality Assurance Manager was never able to get this mechanism operational. Errors in recording weights could easily occur, as they are never confirmed or verified or recorded electronically by the weighing instrument.
- 4.) In response to the complaint filed by Integrated Forensic Laboratories, Mr. Gibbens told the members of the committee that the Austin Police Department Crime Laboratory policy requires that ½ of every exhibit be retained in compliance with court orders. This is not a written policy of the laboratory and not a valid explanation for the destruction of the exhibits requested for re-analysis.

For these reasons and many more, I would like to request that you recommend to the full Commission that a thorough and complete investigation of the Austin Police Department Crime Laboratory be conducted. I believe that any investigation should include reanalysis of items of evidence to confirm that the data included in the case files is valid and represents the items submitted for analysis. I would like to point out that there is a reasonable suspicion that analytical standards could have been used to generate case data. If the original data was unacceptable and destroyed, it certainly brings into question exactly why other data was provided several days later to support a conclusion already released and reported. While some analysts have access to these standards at all times, other must wait until a senior analyst is available and may account for the lapses in time of analysis. Only complete re-analysis will uncover the true analytical results and reveal the errors in the data provided and examined by DPS.

Respectfully,

A handwritten signature in cursive script, reading "Debra L. Stephens".

Debra L. Stephens

EXHIBIT D



City of Austin

Found by Congress, Republic of Texas, 1839
Forensic Science Services Division
P O Box 689001 Austin, Texas 78768-9001
512-974-5150



February 23, 2012

Lynn Robitaille
Legal Counsel
Texas Forensic Science Commission
1700 North Congress Ave, Suite #445
Austin, Texas 78701

Greetings;

On February 10, 2012 the Texas Forensic Science Committee – Investigative Panel reviewed the complaint filed by Ms. Stephens against the Austin Police Department's Forensic Laboratory. During that meeting several questions were asked that needed more research by the Austin Police Department. The following is a response to those questions for the panel's review:

1. What was the timeframe in which the APD Laboratory released preliminary results for investigators?

Response: The forensic chemistry laboratory released preliminary results to investigators in the manner in which the complaint is referring to for approximately 34 months, from January 2008 to October 2010. The first preliminary result found in a case file was generated on January 24, 2008.

2. In how many cases were preliminary results generated during this time period?

Response: The laboratory identified 534 cases in which preliminary results were released during this 34 month period. This equates to an average of 15.7 cases per month. (See attached list of cases)

3. Was the laboratory performing these preliminary results consistently throughout that time period and are they consistent with what DPS reported in their audit of case files?

Response: The laboratory identified 534 cases in which preliminary results were reported to the investigator during this time period. The quality assurance and management staff conducted an audit of a random sampling of cases throughout this time period. Approximately 10% of the case files were reviewed spanning the entire length of time from January 2008 to October 2010. It was determined that the laboratory was performing the preliminary result process consistently during the entire time period that they were being utilized. It was also determined that the process being utilized was consistent with the case folders that were reviewed and reported on by Texas DPS. The audit of the 56 cases showed that in all cases in which instrumental data was required, that the documentation is present in the case folder to prove that the instrumental data was obtained before the preliminary results were released. In marihuana cases, there were matrix entries documenting that the weight and spot tests were recorded prior to release of the preliminary results. In some tablet cases, the preliminary results were based on pharmaceutical markings, which are documented in the case folders. One case was identified in which the weight reported in the preliminary

results differed from the final report weight. A quality issue notification was initiated and upon review, it was determined that the issue appears to have resulted from a transcription error by the analyst, releasing the after analysis weight instead of the before analysis weight. The action taken by the detective was unchanged since the identification and charges filed were unaffected. The final report reflects the correct before analysis net weight, which was forwarded to the investigator three days later. The results of the audit have been attached for your review.

If you need additional information please contact me.

Sincerely,

A handwritten signature in blue ink that reads "William Gibbens". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

William Gibbens, Manager
Forensic Science Services
Austin Police Department
(512) 974-5118

Attached: Preliminary Result Audit Log
 Preliminary Result Case List

Preliminary Result Audit

Case Synopsis L0804741:

Preliminary results:

Release on 4/17/2008 @ 13:10 via email

Results: MDMA 1.34 g

Phencyclidine 3.03 grams

Data: UV time stamp on exhibit 2 (MDMA) "4/17/08 10:23 AM"

GC/MS time stamp on exhibit 2 (MDMA) "17 Apr 2008 11:41"

UV time stamp on exhibit 3 (Phencyclidine) "4/17/08 9:53 AM"

GC/MS time stamp exhibit 3 (Phencyclidine) "17 Apr 2008 11:00 AM"

Final Report:

Date: 4/17/2008

Results:

MDMA 1.34 g

Phencyclidine 3.03 grams

Case Synopsis L0805583:

Preliminary results:

Release on May 6, 2008 @ 1:43 pm via email

Results: No Controlled Substance 12.30 g

Data: UV time stamp on exhibit 2 (No Controlled Substance) "5/6/08 10:03 AM"

GC/MS time stamp on exhibit 2 (No Controlled Substance) "6 May 2008 10:56"

Final Report:

Date: 05/06/2008

Results:

No Controlled Substance Detected

Case Synopsis L0805977:

Preliminary results:

Release on May 14, 2008 @ 10:50 am via email

Results:

Phencyclidine Trace (no visible liquid)

Data: GC/MS time stamp on exhibit 1A (Phencyclidine) "14 May 2008 9:59"

Final Report:

Date: 05/14/2008

Results:

Phencyclidine Trace

Case Synopsis L0806557:

Preliminary results:

Release on May 25, 2008 @ 1:34 pm via email

Results:

Phencyclidine 0.03 g

No Controlled Substance Detected

Data: UV time stamp on exhibit 1 (Phencyclidine) "5/25/08 10:28 AM"

GC/MS time stamp on exhibit 1 (Phencyclidine) "25 May 2008 10:46"

UV time stamp on exhibit 2 (No Controlled Substance) "5/25/08 11:04 AM"

GC/MS time stamp on exhibit 2 (No Controlled Substance) "25 May 2008 11:15"

Final Report:

Date: 05/27/2008

Results:

Phencyclidine 0.03 g

No Controlled Substance Detected

Case Synopsis L0807370:

Preliminary results:

Release on June 13, 2008 @ 10:35 am via email

Results:

Cocaine 10.50 g

Carisoprodol 1 tablet

Trazodone 1 tablet

Sildenafil 1 tablet

Dihydrocodeinone 0.05 tablet

Data: GC/MS time stamp on exhibit 2 (Cocaine) "13 June 2008 9:35"

Pharmaceutical documentation on exhibit 3 (Carisoprodol, Trazodone, Sildenafil, Dihydrocodeinone) dated 6/13/08

Final Report:

Date: 06/13/2008

Results:

Cocaine 10.5 g

No Analysis (tablets)

Case Synopsis L0809491:

Preliminary results:

Release on August 1, 2008 @ 3:15 pm via email

Results:

Codeine 25.33 g
Codeine 123.25 g

Data: GC/MS time stamp on exhibit 2 (Codeine) "1 Aug 2008 14:54"
GC/MS time stamp on exhibit 3 (Codeine) "1 Aug 2008 14:14"

Final Report:

Date: 08/04/08

Results:

Codeine 25.33 g
Codeine 123.25 g

Case Synopsis L0810909:

Preliminary results:

Release on August 28, 2008 @ 3:28 pm via email

Results: No Controlled Substance Detected

Data: UV time stamp on exhibit 1 (No Controlled Substance) "8/28/2008 10:56AM"
FTIR time stamp exhibit 1 (No Controlled Substance) "Thu Aug 28 10:59"
GC/MS time stamp on exhibit 1 (No Controlled Substance) "28 Aug 2008 10:47"

Final Report:

Date: 09/02/2008

Results:

No Controlled Substance Detected

Case Synopsis L0811734:

Preliminary results:

Release on September 15, 2008 @ 11:20 am via email

Results:

Codeine 275.89 g

Data: UV time stamp on exhibit 1b (Codeine) "9/15/2008 10:41 AM"
GC/MS time stamp on exhibit 1b (Codeine) "15 Sept 2008 10:31"

Final Report:

Date: 09/15/08

Results:

Codeine 275.89 g

Case Synopsis L0812374:

Preliminary results:

Release on September 29, 2008 @ 3:45 pm via email

Results: No Controlled Substance 13.28 g

No Controlled Substance 12.06 g

Data: GC/MS time stamp on exhibit 1 (No Controlled Substance) "29 Sep 2008 11:28"

GC/MS time stamp on exhibit 2 (No Controlled Substance) "29 Sep 2008 12:08"

Final Report:

Date: 09/29/2008

Results:

No Controlled Substance Detected

Case Synopsis L0813070:

Preliminary results:

Release on October 13, 2008 @ 11:11 am via email

Results: No Controlled Substance 6.60 g

Data: UV time stamp on exhibit 1 (No Controlled Substance) "10/12/2008 10:54 AM"

GC/MS time stamp on exhibit 1 (No Controlled Substance) "10 Oct 2008 10:57"

Final Report:

Date: 10/13/2008

Results:

No Controlled Substance Detected

Case Synopsis L0813671:

Preliminary results:

Release on October 27, 2008 @ 11:19 am via email

Results:

Promethazine Trace

Data: UV time stamp on exhibit 2 (Promethazine) "10/27/2008 11:04 AM"

GC/MS time stamp on exhibit 2 (Promethazine) "27 Oct 2008 10:20"

Final Report:

Date: 10/30/2008

Results:

Promethazine Trace

Case Synopsis L0814379:

Preliminary results:

Release on November 11, 2008 @ 10:10 am via email

Results:

Alprazolam 1.20 g

Alprazolam 3.33 g

Data: UV time stamp on exhibit 1 (Alprazolam) "11/11/2008 8:56 AM"
GC/MS time stamp on exhibit 1 (Alprazolam) "11 Nov 2008 9:06"
UV time stamp on exhibit 2 (Alprazolam) "11/11/2008 9:42 AM"
GC/MS time stamp on exhibit 2 (Alprazolam) "11 Nov 2008 9:40"

Final Report:

Date: 11/14/2008

Results:

Alprazolam 1.20 g
Alprazolam 3.33 g

Case Synopsis L0815980:

Preliminary results:

Release on December 16, 2008 @ 11:04 am via email

Results:

Alprazolam 0.14 g

Data: UV time stamp on exhibit 1 (Alprazolam) "12/16/2008 10:57 AM"
GC/MS time stamp on exhibit 1 (Alprazolam) "16 Dec 2008 9:50"

Final Report:

Date: 12/16/08

Results:

Alprazolam 0.14 g

Case Synopsis L0900345:

Preliminary results:

Release on January 23, 2009 @ 3:09 pm via email

Results: b 1.1 lbs (18.17 oz)

Data: No Instrumental Analysis

Weight, spot test and Microscopic Examination documented in Matrix.
Audit log shows the entry made for the spot test on 1/23/09 @ 3:08 pm

Final Report:

Date: 01/23/2009

Results:

Marihuana 1.1 lbs

Case Synopsis L0900653:

Preliminary results:

Release on January 22, 2009 @ 10:04 AM via email

Results:

Phencyclidine 22.58 g

Data: UV time stamp on exhibit 1 (Phencyclidine) "1/22/09 9:21 AM"
GC/MS time stamp on exhibit 1 (Phencyclidine) "22 Jan 2009 9:34"

Final Report:

Date: 01/22/2009

Results:
Phencyclidine 22.58 g

Case Synopsis L0901256:

Preliminary results:

Release on January 30, 2009 @ 3:03 pm via email

Results:

Cocaine 0.85 g
Prednisolone 14.32 g

Data: FTIR time stamp on exhibit 1 (Cocaine) "Fri 30 Jan 14:43 2009"
FTIR time stamp on exhibit 3 (Prednisolone) "Fri 30 Jan 14:30 2009"

Final Report:

Date: 01/30/2009

Results:

Cocaine 0.85 g
Prednisolone 14.32 g

Case Synopsis L090186:

Preliminary results:

Release on February 5, 2009 @ 11:33 am via email

Results:

Cocaine 4.28 g
Codeine cough syrup 299.34 g
No controlled substance 20.40 g

Data: GC/MS time stamp on exhibit 2 (Cocaine) "5 Feb 2009 10:14"
UV time stamp on exhibit 3 (Codeine) "2/5/2009 10:23 AM"
UV time stamp on exhibit 5 (No controlled substance) "2/5/2009 11:23 AM"

Final Report:

Date: 02/05/2009

Results:

Cocaine 4.28 g
Codeine 299.34 g
No Controlled Substance Detected

Case Synopsis L0902097:

Preliminary results:

Release on February 17, 2009 @ 7:17 am via email

Results: Negative

Data: UV time stamp on exhibit 1 (No Controlled Substance) "02/17/2009 7:09 AM"

GC/MS time stamp on exhibit 1 (No Controlled Substance) "17 Feb 2009 6:59"

Final Report:

Date: 02/17/2009

Results:

Negative

Case Synopsis L0903169:**Preliminary results:**

Release on March 9, 2009 @ 2:13 pm via email

Results: No Controlled Substance

Data: UV time stamp on exhibit 1 (No Controlled Substance) "03/09/2009 2:02 PM"

GC/MS time stamp on exhibit 1 (No Controlled Substance) "9 Mar 2009 11:56"

Final Report:

Date: 03/09/2009

Results:

No Controlled Substance

Case Synopsis L0904122:**Preliminary results:**

Release on March 26, 2009 @ 9:54 am via email

Results: Marihuana 2.88 ounces

No Controlled Substance Detected

Data: No Instrumental Analysis, Spot test and weight documented in Matrix on exhibit 1 (marihuana) on 03/26/09 @ 9:49am

UV time stamp on exhibit 2 (No Controlled Substance) "3/26/2009 9:10AM"

GC/MS time stamp on exhibit 2 (No Controlled Substance) "26 Mar 2009 9:11"

Final Report:

Date: 03/26/2009

Results:

Marihuana 2.88 ounces

No Controlled Substance Detected

Case Synopsis L0904709:**Preliminary results:**

Release on April 7, 2009 @ 10:40 am via email

Results:

Cocaine 7.68 g

Data: FTIP time stamp on exhibit 1 (Cocaine) "Tue Apr 07 10:16 2009"

GC/MS time stamp on exhibit 1 (Cocaine) "7 Apr 2009 10:22"

Final Report:

Date: 04/09/2009
Results:
Cocaine 7.68 g

Case Synopsis L0905412:

Preliminary results:

Release on April 21, 2009 @ 5:30 pm via email

Results:

Methamphetamine Trace
No controlled substance 10.36 g

Data: GC/MS time stamp on exhibit 1 (Methamphetamine) "21 Apr 2009 14:16"
UV time stamp on exhibit 1 (Methamphetamine) "4/21/2009 5:13 PM"
GC/MS time stamp on exhibit 2 (No Controlled Substance) "21 Apr 2009 15:01"
FTIR time stamp on exhibit 2 (No controlled substance) "Tue Apr 21 13:33 2009"

Final Report:

Date: 04/21/2009

Results:

Methamphetamine Trace
No controlled substance

Case Synopsis L0906107:

Preliminary results:

Release on May 5, 2009 @ 8:55 AM via email

Results:

Phencyclidine 0.18 g

Data: GC/MS time stamp on exhibit 1 (Phencyclidine) "5 May 2009 8:27"

Final Report:

Date: 05/08/2009

Results:

Phencyclidine 0.18 g

Case Synopsis L0906513:

Preliminary results:

Release on May 13, 2009 @ 8:48 am via email

Results:

Alprazolam 0.12 g

Data: Pharmaceutical documentation on exhibit 1 (Alprazolam)

Final Report:

Date: 05/18/2009

Results:

Alprazolam 0.12 g

Case Synopsis L0907110:**Preliminary results:**

Release on May 26, 2009 @ 2:01 pm via email

Results:

Cocaine 2.85 g

Data: GC/MS time stamp on exhibit 1 (Cocaine) "26 May 2009 13:16"

Final Report:

Date: 05/27/2009

Results:

Cocaine 2.85 g

Case Synopsis L0907913:**Preliminary results:**

Release on June 9, 2009 @ 4:29 pm via email

Results:

No controlled substance

Data: UV time stamp on exhibit 1 (No controlled substance) "6/9/2009 4:21 PM"

GC/MS time stamp on exhibit 1 (No Controlled Substance) "9 Jun 2009 16:11"

Final Report:

Date: 06/09/2009

Results:

No controlled substance

Case Synopsis L0908451:**Preliminary results:**

Release on June 20, 2009 @ 10:59 am via email

Results:

Heroin 0.51 g

Data: UV time stamp on exhibit 1 (Heroin) "6/20/2009 10:13 AM"

GC/MS time stamp on exhibit 1 (Heroin) "20 Jun 2009 10:40"

Final Report:

Date: 06/24/2009

Results:

Heroin 0.51 g

Marihuana 0.16 ounces

Case Synopsis L0909526:**Preliminary results:**

Release on July 10, 2009 @ 8:59 am via email

Results:

Item 4: Hydromorphone 0.16 g

Item 5: Dimethyltryptamine 0.13 g

Data: Item 4: Preliminary results based on pharmaceutical markings as indicated in email.

Item 5: GC/MS time stamp "10 Jul 2009 8:28"

Final Report:

Date: 07/16/2009

Results:

Hydromorphone 0.16 g

Dimethyltryptamine 0.13 g

Case Synopsis L0910205:

Preliminary results:

Release on July 24, 2009 @ 10:21 am via email

Results:

Tetrahydrocannabinols 0.06 g

Codeine 0.29 g

Data: GC/MS time stamp on exhibit 1 (Tetrahydrocannabinols) "24 July 2009 9:10"

GC/MS time stamp on exhibit 2 (Codeine) "24 July 2009 9:55"

Final Report:

Date: 07/24/2009

Results:

Tetrahydrocannabinols 0.06 g

Codeine 0.29 g

Case Synopsis L0910534:

Preliminary results:

Release on July 31, 2009 @ 10:45 am via email

Results:

Cocaine 0.15 g

Data: GC/MS time stamp on exhibit 1 (Cocaine) "31 Jul 2009 10:24"

Final Report:

Date: 07/31/2009

Results:

Cocaine 0.15 g

Case Synopsis L0911096:

Preliminary results:

Release on August 12, 2009 @ 9:45 am via pager, 10:21 am via email

Results:

Heroin 0.44 g

Data: UV time stamp on exhibit 1 (Heroin) "08/12/2009 9:13 AM"

Final Report:

Date: 08/12/2009

Results:

Heroin 0.44 g

Case Synopsis L0911722:

Preliminary results:

Release on August 25, 2009 @ 11:05 am via email

Results:

No controlled substance

Data: FTIR time stamp on exhibit 1 (No controlled substance) "Tue Aug 25 09:04 2009"

GC/MS time stamp on exhibit 1 (No Controlled Substance) "25 Aug 2009 9:16"

Final Report:

Date: 08/25/2009

Results:

No controlled substance

Case Synopsis L0912226:

Preliminary results:

Release on 09/03/09 @ 12:08 pm via email

Results:

Cocaine 2.67 g

Phencyclidine 0.38 g

Data: GC/MS time stamp on exhibit 1 (cocaine) "3 Sep 2009 11:01"

FTIR time stamp on exhibit 1 (cocaine) "Thu Sep 03 12:01:35 2009"

UV time stamp on exhibit 2 (PCP) "9/3/2009 9:13:03 AM"

GC/MS time stamp on exhibit 2 (PCP) "3 Sep 2009 11:32"

Final Report:

Date: 09/03/09

Results:

Cocaine 2.67 g

Phencyclidine 0.38 g

Case Synopsis L0912954:

Preliminary results: (Exhibit 2)

Release on 10/30/2009 @ 10:55 am via email

Results: No Controlled Substances Detected.

Data: UV time stamp "10/30/2009 10:39:36 AM"

GC/MS time stamp "29 Oct 2009 16:09"

Final Report:

Date: 10/31/2009

Results: No Controlled Substances Detected.

Case Synopsis L:0913730**Preliminary results:**

Release on October 16, 2009 9:50 AM

Results: Diazepam 1.80 g

Data: UV time stamp "10/15/2009 9:46:52 AM"

GC/MS time stamp "14 Oct 2009 16:02"

Final Report:

Date: 10/16/2009

Results: Diazepam 1.80 g

Case Synopsis L0914085:**Preliminary results: (Item 2 only- suspected steroid case)**

Release on 12/9/2009 @ 1107 CST via pager to Detective.

Data: UV time stamp "12/2/2009 2:39:18 PM"

GC/MS time stamps "15 Oct 2009 16:22", "7 Dec 2009 12:24"

Results: No Controlled Substances Detected (item 2)

Final Report:

Date: 12/7/2009

Results: Cocaine 0.11 g (not released with preliminary results)

No controlled substances detected

Case Synopsis L0914523:**Preliminary results (item 1 only):**

Release on 10/26/2009 @ 2:04 PM via email

Results: Heroin trace

Data: GC/MS time stamp "26 Oct 2009 10:45"

Final Report:

Date: 10/30/2009

Results: Heroin trace

Case Synopsis L0915011:**Preliminary results:**

Release on 11/06/2009 @ 10:31 AM via email and pager to Detective.

Data: Audit log shows entry of gross weight time stamp "11/6/09 10:22 am"

Audit log shows entry of positive spot test "11/06/09 10:22 am"

Results: Marihuana 13.56 oz

Final Report:

Date: 11/10/2009

Results: Marihuana 13.56 oz

Case Synopsis L0915130:

Preliminary results (Item 2 only):

Release on 11/07/2009 @ 1:05 pm

Results: No Controlled Substances Detected (contains Dextromethorphan and Promethazine), 200.42 g

Data: GC/MS time stamp "7 Nov 2009 12:41"

Final Report:

Date: 11/16/2009

Results: No Controlled Substances Detected

Case Synopsis L0915527:

Preliminary results:

Release on 11/16/2009 @ 13:30 hrs via email

Results: Promethazine 1.95 g

No controlled substances are present 260.47 g

Data: Item 1 –

GC/MS time stamp "16 Nov 2009 12:27"

Item 2 –

GC/MS time stamp "16 Nov 2009 13:07"

Final Report:

Date: 11/16/2009

Results: Promethazine 1.95 g

No controlled substances detected

Case Synopsis L0916387:

Preliminary results:

Release on 12/07/2009 11:56 AM

Results: No controlled substances detected (Suspected Urine)

Data: UV time stamp "12/7/2009 10:55:58 AM"

GC/MS time stamp "7 Dec 2009 11:09"

Final Report:

Date: 12/8/2009

Results: No controlled substances detected.

Case Synopsis L0916857:

Preliminary results (Item 2 only):

Release on 12/17/2009 @ 2:55 PM via email

Results: No controlled substances detected

Data: UV time stamp "12/17/2009 2:27:34 PM"

GC/MS time stamp "17 Dec 2009 14:24"

Final Report:

Date: 12/18/2009

Results: No controlled substances detected

Case Synopsis L1000305:**Preliminary results (Item 4 only):**

Release on 01/08/2010 @ 2:10 PM via email and pager to Detective

Results: No Controlled Substances

Data: UV time stamp "1/8/2010 11:52:54 AM"

UV time stamp "1/8/2010 1:49:34 PM"

GC/MS time stamp "8 Jan 2010 13:23"

FTIR time stamp "Fri Jan 08 13:33:36 2010"

Final Report:

Date: 01/18/2010

Results: No controlled substances detected

Case Synopsis L1000612:**Preliminary results (Item 1 only):**

Release on 01/17/2010 @ 10:47 AM via email

Results: Cocaine 0.77 g

Data: FTIR time stamp "Sun Jan 17 10:01:28 2010"

Final Report:

Date: 1/19/2010

Results: Cocaine 0.77 g

Case Synopsis L1001248:**Preliminary results:**

Release on 02/04/2010 @ 11:00 hrs in person to Detective

Results: Item 1: Methenolone Enanthate 25.65 g

Item 4: Tamoxifen 6.02 g

Data: Item 1: GC/MS time stamp "3 Feb 2012 10:20"

Item 4: GC/MS time stamp "3 Feb 2012 15:36"

Final Report:

Date: 02/09/2010

Results: Methenolone Enanthate 25.65 g

No Analysis

No Analysis

Tamoxifen 6.02 g

Case Synopsis L1001966:**Preliminary results:**

Release on 02/19/2010 @ 5:00 PM via email

Results: Item 3.1: Heroin 0.77 g
Item 3.2: 6-monoacetylmorphine, heroin, cocaine 0.46 g
Data: Item 3.1: GC/MS time stamp "19 Feb 2010 15:37"
Item 3.2: GC/MS time stamp "19 Feb 2012 16:09"

Final Report:

Date: 2/23/2010
Results: Item 3.1: Heroin 0.77 g
Item 3.2: Heroin, 6-monoacetylmorphine and cocaine 0.46 g

Case Synopsis L1002827:

Preliminary results:

Release on March 13, 2010 10:34 AM via email
Results: Alprazolam 0.29 g
Data: GC/MS time stamp "13 Mar 2010 10:22"

Final Report:

Date: 03/17/2010
Results: Alprazolam 0.29 g

Case Synopsis L1003605:

Preliminary results:

Release on April 01, 2010 @ 1:48 PM via email
Results: Amphetamine 0.13 g
Data: UV time stamp "4/1/2010 1:07:47 PM"
GC/MS time stamp "1 Apr 2010 13:24"

Final Report:

Date: 4/1/2010
Results: Amphetamine 0.13 g

Case Synopsis L104075:

Preliminary results (Item 1 only):

Release on April 12, 2010 @ 4:07 PM via email and pager
Results: Codeine (cough syrup), penalty group 4 net weight: 1.41 g
Data: GC/MS time stamp "12 Apr 2010 15:21"

Final Report:

Date: 4/16/2010
Results: Codeine (contains codeine cough syrup – not more than 200 milligrams of codeine per 100 milliliters) 2.23 g

Case Synopsis L1004449:

Preliminary results:

Release on April 20, 2010 @ 10:31 AM via email
Results: cocaine 0.12 g

Data: UV time stamp "4/20/2010 9:13:24 AM"
GC/MS time stamp "20 Apr 2010 9:19"

Final Report:

Date: 4/20/2010
Results: cocaine 0.12 g

Case Synopsis L1005121:

Preliminary results:

Release on May 4, 2010 @ 10:25 AM via email
Results: phencyclidine 7.82 g
Data: UV time stamp "5/4/2010 9:30:51 AM"
GC/MS time stamp "4 May 2010 9:47"

Final Report:

Date: 5/4/2010
Results: phencyclidine 7.82 g

Case Synopsis L106290:

Preliminary results:

Release on May 28, 2010 11:34 AM via email and pager
Results: Item 1: Codeine (contains codeine cough syrup – not more than 200 milligrams per 100 milliliters), penalty group 4 152.95 g
Item 2: Codeine (contains codeine cough syrup – not more than 200 milligrams per 100 milliliters), penalty group 4 299.14 g
Data: Item 1: GC/MS time stamp "28 May 2010 10:46"
Item 2: GC/MS time stamp on blank "28 May 2010 11:00". Interview with the analyst indicates that the sample was analyzed in the autosampler sequence after the blank, but the data file for the sample was not recoverable.

Final Report:

Date: 6/11/2010
Results: Item 1: Contains codeine (cough syrup) 152.95 g
Item 2: Contains codeine (cough syrup) 299.14 g

Case Synopsis L1006944:

Preliminary results:

Release on June 10, 2010 10:27 AM
Results: heroin 0.26 g
Data: UV time stamp "6/10/2010 9:46:49 AM"
GC/MS time stamp "10 Jun 2010 10:05"

Final Report:

Date: 6/10/2010
Results: heroin 0.26 g

Case Synopsis L1007658:

Preliminary results:

Release on June 24, 2010 11:57 AM

Results: heroin 0.44 g

Data: UV time stamp "6/24/2010 10:30:35 AM"

GC/MS time stamp "24 Jun 2010 11:18"

Final Report:

Date: 6/24/2010

Results: heroin 0.44 g

Case Synopsis L1008402:

Preliminary results:

Release on July 10, 2010 11:40 AM

Results: phencyclidine (PCP), penalty group 1 1.85 g

Data: UV time stamp "7/10/2010 9:29:01 AM"

GC/MS time stamp "10 Jul 2010 8:58"

Final Report:

Date: 07/12/2010

Results: phencyclidine 1.85 g

Case Synopsis L1008620:

Preliminary results:

Release on July 14, 2010 6:37 PM via email

Results Item 3: dimethyltryptamine, penalty group 2 0.14 g

Item 5: MDMA, penalty group 2 0.76 g

Item 6: MDMA, penalty group 2 0.13 g

Item 11: MDMA, penalty group 2 0.45 g

Data: The audit log indicates that the presumptive color tests were saved on 7/14/2012 @ 5:01 PM.

Item 3: GC/MS time stamp "14 Jul 2010 17:16"

UV time stamp "7/14/2010 5:49:36 PM"

Item 5: GC/MS time stamp "14 Jul 2010 17:47"

UV time stamp "7/14/2010 5:45:34 PM"

Item 6: GC/MS time stamp "14 Jul 2010 18:02"

UV time stamp "7/14/2010 6:20:01 PM"

Item 11: GC/MS time stamp "14 Jul 2010 16:45"

Final Report:

Date: 08/03/2010

Results: Item 3: dimethyltryptamine 0.14 g

Item 5: 3,4-methylenedioxymethamphetamine 0.76 g

Item 6: 3,4-methylenedioxymethamphetamine 0.13 g

Item 11: 3,4-methylenedioxymethamphetamine 0.45 g

PRIORITY 2 DRUG CASES
ASSIGNED ANY DAY OF
WEEK FROM 01/01/2008 -
10/15/2010

Audited	LAB #/RPT #	Day of Week
	L0801077	TUESDAY
	L0801459	SUNDAY
	L0804276	MONDAY
	L0804277	MONDAY
	L0804279	MONDAY
	L0804357	TUESDAY
	L0804358	TUESDAY
	L0804457	FRIDAY
y	L0804741	THURSDAY
	L0805196	MONDAY
	L0805197	MONDAY
	L0805305	TUESDAY
	L0805313	WEDNESDAY
	L0805405	THURSDAY
	L0805552	MONDAY
	L0805553	MONDAY
	L0805554	MONDAY
y	L0805583	MONDAY
	L0805606	TUESDAY
	L0805611	TUESDAY
	L0805659	WEDNESDAY
	L0805743	THURSDAY

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	L0805932	TUESDAY
	L0805943	TUESDAY
	L0805944	TUESDAY
y	L0805976	WEDNESDAY
	L0805977	WEDNESDAY
	L0806025	THURSDAY
	L0806100	THURSDAY
	L0806186	MONDAY
	L0806217	TUESDAY
	L0806236	TUESDAY
	L0806449	MONDAY
	L0806504	TUESDAY
	L0806508	TUESDAY
y	L0806557	TUESDAY
	L0806640	WEDNESDAY
	L0806767	SATURDAY
	L0806767	SATURDAY
	L0806786	SUNDAY
	L0806959	WEDNESDAY
	L0807074	FRIDAY
	L0807308	WEDNESDAY
	L0807329	THURSDAY
y	L0807370	FRIDAY
	L0807397	FRIDAY
	L0807419	SATURDAY
	L0807444	SUNDAY

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	L0807798	MONDAY
	L0807799	MONDAY
	L0807844	TUESDAY
	L0808200	WEDNESDAY
	L0808202	WEDNESDAY
	L0808457	WEDNESDAY
	L0808523	THURSDAY
	L0808620	SUNDAY
	L0808778	WEDNESDAY
	L0808887	FRIDAY
	L0809016	MONDAY
	L0809116	WEDNESDAY
	L0809364	TUESDAY
y	L0809491	FRIDAY
	L0809492	THURSDAY
	L0809592	SATURDAY
	L0809700	MONDAY
	L0809701	MONDAY
	L0809871	THURSDAY
	L0810715	MONDAY
	L0810728	MONDAY
	L0810893	THURSDAY
y	L0810909	THURSDAY
	L0810923	THURSDAY
	L0811086	TUESDAY
	L0811100	TUESDAY

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	L0811110	TUESDAY
	L0811115	TUESDAY
	L0811177	WEDNESDAY
	L0811479	MONDAY
	L0811602	WEDNESDAY
y	L0811734	MONDAY
	L0811761	MONDAY
	L0811808	TUESDAY
	L0811814	TUESDAY
	L0811895	THURSDAY
	L0812018	MONDAY
	L0812186	WEDNESDAY
	L0812187	WEDNESDAY
	L0812307	SUNDAY
y	L0812374	MONDAY
	L0812394	MONDAY
	L0812478	WEDNESDAY
	L0812628	SATURDAY
	L0812651	SUNDAY
	L0812897	THURSDAY
	L0812904	THURSDAY
	L0812936	FRIDAY
	L0812976	SATURDAY
y	L0813070	MONDAY
	L0813182	WEDNESDAY
	L0813213	THURSDAY

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	L0813243	FRIDAY
	L0813261	FRIDAY
	L0813262	FRIDAY
	L0813418	TUESDAY
	L0813582	SATURDAY
	L0813670	MONDAY
y	L0813671	MONDAY
	L0813797	WEDNESDAY
	L0813954	SUNDAY
	L0813997	MONDAY
	L0813998	MONDAY
	L0814145	WEDNESDAY
	L0814246	FRIDAY
	L0814348	MONDAY
	L0814349	MONDAY
y	L0814379	TUESDAY
	L0814683	MONDAY
	L0814739	TUESDAY
	L0814740	TUESDAY
	L0814749	TUESDAY
	L0814792	WEDNESDAY
	L0814845	THURSDAY
	L0814854	THURSDAY
	L0814942	SUNDAY
	L0814995	MONDAY
	L0815052	TUESDAY

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	L0815203	SATURDAY	127
	L0815216	SUNDAY	128
	L0815295	MONDAY	129
	L0815589	MONDAY	130
	L0815768	THURSDAY	131
	L0815806	FRIDAY	132
y	L0815980	TUESDAY	133
	L0816091	THURSDAY	134
	L0816096	THURSDAY	135
	L0816097	THURSDAY	136
	L0816140	FRIDAY	137
	L0816151	SATURDAY	138
	L0816152	SATURDAY	139
	L0816436	SUNDAY	140
	L0816517	TUESDAY	141
	L0816568	WEDNESDAY	142
	L0900003	THURSDAY	143
	L0900040	FRIDAY	144
	L0900062	SATURDAY	145
	L0900075	SATURDAY	146
	L0900077	SATURDAY	147
	L0900078	SATURDAY	148
	L0900319	THURSDAY	149
y	L0900345	THURSDAY	150
	L0900461	MONDAY	151
	L0900464	MONDAY	152

	L0900480	MONDAY	153
	L0900515	TUESDAY	154
	L0900533	TUESDAY	155
	L0900576	WEDNESDAY	156
	L0900608	THURSDAY	157
	L0900647	FRIDAY	158
y	L0900653	FRIDAY	159
	L0900678	FRIDAY	160
	L0900695	SATURDAY	161
	L0900759	TUESDAY	162
	L0900962	FRIDAY	163
	L0900983	FRIDAY	164
	L0901020	SATURDAY	165
	L0901150	TUESDAY	166
	L0901160	TUESDAY	167
y	L0901256	THURSDAY	168
	L0901257	THURSDAY	169
	L0901291	THURSDAY	170
	L0901406	MONDAY	171
	L0901418	MONDAY	172
	L0901435	TUESDAY	173
	L0901485	TUESDAY	174
	L0901549	WEDNESDAY	175
	L0901572	THURSDAY	176
y	L0901586	THURSDAY	177
	L0901599	THURSDAY	178

	L0901613	FRIDAY	179
	L0901845	TUESDAY	180
	L0901974	FRIDAY	181
	L0902012	SATURDAY	182
	L0902013	SATURDAY	183
	L0902034	SUNDAY	184
	L0902035	SUNDAY	185
y	L0902097	TUESDAY	186
	L0902111	TUESDAY	187
	L0902124	TUESDAY	188
	L0902128	TUESDAY	189
	L0902170	WEDNESDAY	190
	L0902183	WEDNESDAY	191
	L0902186	WEDNESDAY	192
	L0902510	TUESDAY	193
	L0902512	TUESDAY	194
	L0902760	SUNDAY	195
	L0902779	MONDAY	196
	L0902815	MONDAY	197
	L0902860	TUESDAY	198
	L0902861	TUESDAY	199
	L0902903	WEDNESDAY	200
	L0902907	WEDNESDAY	201
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	L0904008	TUESDAY	210
	L0904118	THURSDAY	211
y	L0904122	THURSDAY	212
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	L0904443	WEDNESDAY	216
	L0904458	WEDNESDAY	217
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	L0904674	MONDAY	219
	L0904690	WEDNESDAY	220
y	L0904709	TUESDAY	221
	L0905094	TUESDAY	222
	L0905112	WEDNESDAY	223
	L0905145	WEDNESDAY	224
	L0905218	THURSDAY	225
	L0905246	FRIDAY	226
	L0905332	MONDAY	227
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	L0905974	SATURDAY
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y	L0906107	TUESDAY
	L0906158	WEDNESDAY
	L0906182	WEDNESDAY
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	L0906465	TUESDAY
	L0906468	TUESDAY
	L0906492	TUESDAY
	L0906512	WEDNESDAY
y	L0906513	WEDNESDAY
	L0906521	WEDNESDAY

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	L0906613	FRIDAY
	L0906684	SUNDAY
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	L0906782	MONDAY
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	L0908068	THURSDAY
	L0908069	THURSDAY
	L0908281	TUESDAY
	L0908325	WEDNESDAY
	L0908337	THURSDAY
y	L0908451	SATURDAY

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	L0908887	MONDAY
	L0908890	MONDAY
	L0909128	FRIDAY
	L0909247	MONDAY
	L0909297	MONDAY
	L0909353	MONDAY
	L0909385	TUESDAY
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	L0910204	FRIDAY
y	L0910205	FRIDAY
	L0910327	MONDAY
	L0910328	MONDAY
	L0910371	TUESDAY
	L0910400	TUESDAY
	L0910401	TUESDAY
	L0910527	FRIDAY
	L0910528	FRIDAY
	L0910533	FRIDAY

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	L0911307	MONDAY	314
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	L0912305	SATURDAY
	L0912306	SATURDAY
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	L0913857	SUNDAY
	L0913881	MONDAY
	L0914035	WEDNESDAY
	L0914043	THURSDAY
	L0914046	WEDNESDAY

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	L0915075	THURSDAY	378
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	L0916428	MONDAY

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	L0916495	TUESDAY
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y	L1000612	SUNDAY
	L1000678	WEDNESDAY
	L1000725	WEDNESDAY
	L1000844	FRIDAY

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	L1004386	MONDAY
y	L1004449	TUESDAY
	L1004477	WEDNESDAY

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	L1004531	THURSDAY	484
	L1004580	FRIDAY	485
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y	L1008402	SATURDAY
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	L1008422	SUNDAY
	L1008423	SUNDAY
	L1008483	MONDAY
	L1008570	WEDNESDAY
y	L1008620	WEDNESDAY

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From: "Gibbens, Bill" <Bill.Gibbens@austintexas.gov>

Date: Tue, 13 Mar 2012 11:44:06 -0700

To: Ralph Keaton <RKeaton@ascld-lab.org>, "Robitaille, Lynn" <lmr036@SHSU.EDU>, Buddy Meyer <Buddy.Meyer@co.travis.tx.us>

Cc: "Harris, Ed" <Ed.Harris@austintexas.gov>, "Arnold, Tony [APD]" <Tony.Arnold@austintexas.gov>

Subject: FW: Additional Information for APD Complaint

All,

With regards to the complaint of cheating on a proficiency test by former employee Laura Carroll we have looked into this issue and found the following:

- We are assuming that the proficiency in question is the 2010 drug chemistry proficiency test provided by CTS, due to the recollection of the Chemistry Supervisor.
- Laura Carroll was assigned her proficiency test on 4/10/10.
- Supervisor Gloria Rodriguez advised that she remembers Laura Carroll submitting her case folder to Mrs. Rodriguez and then asking for it back a short time later. Because the case had not been tech or admin reviewed there was no alarm for concern.
- Laura Carroll returned the case file to the Supervisor for the review process.
- After all scientist were administered the test, and the expected results were received from CTS, it was found that all scientists had identified the substance correctly.
- All scientists were interviewed with regards to these allegations. None of them were aware of any cheating or collaboration that took place during this proficiency test process.
- The issue with this complaint is Ms. Stephens. If Ms. Stephens felt that the actions she alleges occurred then she failed to act ethically by not reporting this matter to her superiors. To date, management has received no communications from any drug analysts of improper activity regarding proficiency exams. Two years after the fact she reports these allegations.
- Ms. Carroll successfully completed each proficiency exam she was administered while she was with the Department.
- As part of the instructions for the 2008 exam all analysts were reminded by the supervisor, in writing, not to ask for assistance in performing the analysis.
- The Quality Assurance office conducted an audit of all activity in each analyst's case file for the 2010 proficiency test to determine if Ms. Carroll had accessed another analyst's data. There is no indication in the audit log that Ms. Carroll opened or viewed any of these proficiency test documents of another analyst.

If you need additional information please let me know.

Thanks You,

Bill Gibbens, Manager
Forensic Science Division
Austin Police Department

From: Gibbens, Bill

Sent: Friday, March 09, 2012 9:34 AM

To: 'Lynn Robitaille'; 'Ralph Keaton'; 'Buddy Meyer'

Subject: FW: Additional Information for APD Complaint

All,

The issue with Tony Arnold was addressed. See attached verbal warning related to the violation.

I am checking on the issue Ms. Stephens brings up on the proficiency test with Laura Carroll.

The case with Katherine Sanchez has been addressed and documented in the case information you received:

Initial drug analysis request was made on 01/02/2010 at 6:50 a.m.

Instrument time stamp indicates the UV data was acquired on 01/02/2010 at 2:15 p.m. and 2:35 p.m. and GC-MS data was acquired on 01/02/2010 at 2:38 p.m. and 2:53 p.m. Preliminary results were administratively approved by the analyst and released via time-stamped e-mail to the Detective on 01/02/2010 at 3:24 p.m.

Preliminary result was Quetiapine, 5.51 g, based on UV and GC-MS data.

Instrument time stamp indicates additional UV data was acquired on 01/04/2010 at 10:50 a.m.; additional GC-MS data was acquired on 01/04/2010 @ 10:09 and 10:24; and FTIR data was acquired on 01/04/2010 at 10:01 a.m. Additional data did not support preliminary result.

Final report indicating 'No Controlled Substances Detected' was issued on 01/06/2010.

Detective was notified on 01/06/2010 regarding the discrepancy between preliminary and final results.

Ms Stephens re-ran the sample on her own on 8/10/10, seven months after we notified the detective of the preliminary result discrepancy.

If you need additional information please let me know.

Bill Gibbens, Manager
Forensic Science Division
Austin Police Department

From: Debbie Stephens [<mailto:stephensdeb@yahoo.com>]

Sent: Friday, March 09, 2012 7:05 AM

To: Buddy Meyer; Robitaille Lynn

Subject: Additional Information for APD Complaint

Mr. Meyer,

I have provided additional information to ASCLD/LAB related to violations committed at the APD Laboratory. I have attached a copy for your review as well. I will also provide a copy to Texas Forensic Science Commission Legal Counsel, Lynn Robitaille.

Sincerely,

Debbie

**AUSTIN POLICE DEPARTMENT
RECORD OF VERBAL REPRIMAND**

Employee Name: Anthony Arnold

Date: November 1, 2010

Violation Details:

On October 27, 2010 Mr. Arnold visited the Chemistry Section and borrowed another employee's access card to gain entry into the laboratory's vestibule. At that time Mr. Arnold did not have access to the Chemistry Section laboratory through his personal access card even though he is part of the management team and has access to all areas through keys.

Basis for Reprimand:

Forensic Science Division Operations Manual:

Chapter 33 – Forensic Division Security

Responsibilities

1. Managers, Supervisors or designees are responsible for:
 - A. Approving access to the Division areas;
 - B. Issuing and collecting keys, key cards, and/or combination codes;
 - C. Maintaining records of accountability of access keys, codes, combinations, and/or key cards;
 - D. Maintaining functional card readers, combination locks, and key locks;
 - E. Changing keys, combinations, or access if security has been breached or when the supervisor deems necessary;
 - F. Participating in the overall security of the building;
 - G. Coordination of security clearances and procedures with building security staff
2. Employees are responsible for:
 - A. Maintaining key cards, keys and combinations in a secure manner;
 - B. Maintaining evidence entrusted to their custody in a secure manner;
 - C. Reporting unauthorized activity and breaches of security to management.

Improvements Necessary:

Mr. Arnold is part of the management team and has such has access to the whole laboratory through key access. However, even though he does have access through other means, the use of someone else's access card to gain entry is not permitted.

Expectations:

Mr. Arnold's access restrictions have been changed to provide him appropriate management access. He is expected to utilize his own methods of access within the laboratory.

Similar offenses or a failure to show improvement or follow the expectations outlined above may result in

additional disciplinary actions up to and including termination.

 11-1-10

Employee Signature/Date *(My signature verified that I have received this document, and not necessarily that I agree with it's contents.)*

 11/1/10

Supervisor Signature/Date

Witness Signature/date *(If employee refuses to sign have the delivery of this form witnessed)*

A copy of this record will be maintained in your division personal file and Human Resources file.



City of Austin

Found by Congress, Republic of Texas, 1839
Forensic Science Services Division
P O Box 689001 Austin, Texas 78768-9001
512-974-5150



February 7, 2012

Lynn Robitaille
Legal Counsel
Texas Forensic Science Commission
1700 North Congress Ave, Suite #445
Austin, Texas 78701

Greetings;

On January 5, 2011 I was informed that Ms. Stephens has filed a complaint (see attached) with the Travis County District Attorney's office regarding unqualified laboratory management and reports being released before analysis was conducted. The District Attorney's office has requested that Texas DPS look into these allegations. Pat Johnson, Laboratory Director for DPS looked at the documentation furnished by Ms. Stephens and concluded that there was insufficient documentation to prove or disprove many of her statements. The District Attorney's office requested that Texas DPS review a list of 23 cases that Ms. Stephens provided to them as proof.

Issue #1 – Unqualified Management

The Austin Police Department laboratory has gone through two on site inspections by ASCLD/LAB, the initial accreditation in 2005 and the subsequent renewal inspection in 2010. In both reports there were no findings that the laboratory management was unqualified (see attachments). As for not being scientists, laboratory management does come from a recognized discipline, which is crime scene and latent print analysis. The laboratory manager is currently proficiency tested in the bloodstain pattern discipline and conducts casework in this area. The Laboratory Assistant Manager is proficiency tested and conducts casework in latent print analysis.

Issue #2 – Unsupported Results

Background Information:

- From 2008 until October 15, 2010 the Chemistry lab issued preliminary findings to narcotics detectives on subjects that had been arrested on drugs of which they could not test in the field or needed a weight to determine penalty group. According to CCP Art. 17.033. RELEASE ON BOND OF CERTAIN PERSONS ARRESTED WITHOUT A WARRANT, the detectives only have 24 hours to file charges on a misdemeanor and 48 hours to file charges on a felony before the subject is released. On weekends and holidays when time is a factor, the on-call chemist is called in to perform initial testing on a sample in order to meet the detective's needs. A preliminary result was issued to the detective at that time and during the following work week the entire case was completed and the final report was issued.
- On October 15, 2010 the section SOP changed to eliminate this preliminary testing procedure. The on-call chemist is still required to perform this function, but they are now required to perform a full analysis on the drug in question, perform administrative review and

issue a final report to the detective. Subsequent testing on any additional items of evidence is performed the following week and a second final report is issued.

Internal Findings Regarding Complaint:

After receiving the list of cases from the District Attorney's office through Texas DPS the Quality Assurance Manager pulled all hardcopy and electronic case files. In reviewing the case files it was determined:

- If there was instrumental analysis conducted on the case, the documentation shows that the analysis was performed before the preliminary results were released.
- There are several cases in which the analysts performed spot testing and weights and hand noted the results at that time. The analyst was unable to complete the documentation electronically until the original report was transcribed by our Reports Section, which was typically the next work weekday. Those results were documented in the electronic notes the day of the final analysis and the handwritten notes were destroyed. It was not until approximately October of 2010 that it was determined that the notes in the LIMS system was not reflective of the actual date the spot tests and weights were obtained, but rather the date they were entered into the LIMS system. Policies were changed at that time to eliminate preliminary results and currently a full analysis is conducted on the questioned items with a final report issued to the officer. Full case analysis is then completed the next work week.
- With the exception of one case, the preliminary analysis released matched the results on the final report. The one case was identified upon final analysis two days after the preliminary results as an error and a corrective action report documents that incident. The indication to the officer on the preliminary result was "no controlled substance was detected", which is the same result as reported in the final result.

I have reviewed the letter submitted to the Travis County District Attorney's office by Mr. Pat Johnson and our laboratory agrees that we were not meeting the documentation guidelines with the system utilized before October of 2010. In October of 2010 policies were changed to eliminate this issue and the current policy is that a full analysis is conducted on the items in question and a final report is issued to the investigators awaiting information to file charges.

I have previously provided a synopsis of each case outlining the timeline as well as the supporting analysis documentation for each case in question.

If you need additional information please contact me.

Sincerely,



William Gibbens, Manager
Forensic Science Services
Austin Police Department
(512) 974-5118

EXHIBIT E

From: Ron Fazio
To: Robitaille, Lynn;
Subject: FW: Austin PD Crime Lab
Date: Wednesday, February 08, 2012 5:40:18 PM
Attachments: Item 23 30x ns0002.JPG
scan1108165 20111013100242.pdf

Ronald T. Fazio, F-ABC
Laboratory Director

Integrated Forensic Laboratories, Inc.
An ASCLD-LAB Accredited Laboratory
www.iflabs.com
Lab 817-553-6565
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From: Ron Fazio [mailto:rfazio@iflabs.com]
Sent: Tuesday, January 17, 2012 4:48 PM
To: 'rkeaton@ascld-lab.org'; 'Aliece Watts'; 'Nate'; 'Aubrey Norberg'
Subject: Austin PD Crime Lab

Bud,

I am very reluctant to submit this information to you, as I don't want to complain about other labs or distract from the on-going work with El Paso Crime Lab. However, we have worked several cases behind Austin PD's controlled substance lab and found problems so large, I feel I am ethically bound to bring them to your attention.

IFL Case #1108165

The most severe case was our Laboratory # 1108165. I've include a pdf copy of our case file. In brief, Austin PD originally analyzed the evidence in October 2010 and found 15.24 grams of material containing cocaine. For unknown reasons, the evidence was re-analyzed in August 2011 and found to be 8.65 grams of material containing benzoylecgonine (a metabolite of cocaine). We have not been told why the case was re-analyzed.

During research, I did determine that it is possible for cocaine to metabolize into benzoylecgonine, if the material is not dried properly during manufacturing. It should be noted that the original analyst's notes indicated the sample was moist. However, the sample lost 43% of its mass (6.59 grams) during storage. This cannot be explained by the chemical reaction of cocaine. I was extremely concerned that either material containing cocaine could have leaked and contaminated other samples, or significant amounts of evidence has been lost. I believe that most laboratories would treat this with a significant investigation and document through corrective action reports.

As part of my subpoena request, I asked for all corrective actions, direct or indirect, generated in relation to this case. Austin PD crime lab reported that no corrective actions were generated.

Our subsequent analysis of the evidence revealed, of course, benzoylecgonine, but also cocaine. Upon review of the second Austin examination (August 2011), it was determined that they did find cocaine and compared to a standard, yet still did not report the presence.

Ultimately, I received authorization from the client attorney to discuss this case with Austin PD crime lab. On December 13th, 2011, I spoke with Tony Arnold about the issues above. I sent Mr. Arnold a copy of our case file. While Mr. Arnold expressed concern over the information I gave him, I have not been provided any additional information.

IFL Case #1111143

Immediately after finishing the above case, we received another case reported by Austin PD. We have been told that Austin PD reported this as material other than marihuana containing THC. In Texas, this is a PG1 group and carries a stiff penalty compared to marihuana, a PG3 group. Before reporting "material other than marihuana", it must be very careful to clearly establish that the sample is NOT marihuana. It should have little to none of botanical characteristics of marihuana.

On re-examination of this case, we determined that the material was comprised almost entirely of cystolithic trichomes, non-cystolithic trichomes, and glandular trichomes. In other words, this sample was simply compressed siftings of marihuana and not "material other than marihuana". I have included one of the photomicrographs we took of the material; I can send more if you desire. I am concerned that the evidence was not properly examined at the Austin lab.

Unfortunately, IFL did not receive permission to discuss this case with Austin PD until only recently. I will defer to ASCLD/LAB before I contact Austin PD again.

IFL Case #XXXXXXXX

I have not received permission to discuss this case, so I can not give details or a copy of the case folder. If ASCLD/LAB desires, I can contact the attorney and attempt to get permission.

IFL received a court-ordered request to re-weigh a large number of MDMA tablets. However, Austin PD sent only ½ of the tablets. Austin PD claimed that their policy was to retain ½ of the exhibit, in case there was a disagreement between the defense lab and their own. However, they have not

consistently applied this policy with the two other cases described above. IFL was unable to complete the case for the defense.

Summary

IFL is not in the business to investigate other labs. We serve all members of the justice system with timely, cost-effective, forensic testing. While we work defense cases behind many, many labs, we have never felt the need to report a problem.

My main concern is that while we receive very, very little defense casework from the Austin area (4 to 6 cases in the last couple of years), these are the last three cases from the Austin lab. I can completely understand an occasional irregularity, but every case from Austin has shown significant issues. In addition, the loss of a significant amount of a controlled substance is particularly disturbing. I'm more than a little surprised that laboratory management did not investigate.

Please do not hesitate to contact me either by phone or email. You can always reach me by phone at the lab number below or on my cell (817-675-6399).

Ronald T. Fazio, F-ABC
Laboratory Director

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EXHIBIT F



City of Austin

Found by Congress, Republic of Texas, 1839
Forensic Science Services Division
P O Box 689001 Austin, Texas 78768-9001
512-974-5150



February 15, 2012

Mr. Ralph Keaton
ASCLD/LAB
130 J Technology Dr
Garner, NC 27529

Greetings;

On February 6, 2012 the laboratory was notified by ASCLD/LAB of the receipt of two allegations against the Austin Police Department's Forensic Laboratory. The first was the re-opening of the Deb Stephens complaint and the second was a complaint, consisting of three incidents, initiated by Integrated Forensic Laboratory concerning the below listed cases. The following is the laboratory's position on each IFL complaint for your review.

Issue #1 – Lab #10-12068

From the Complaint: "I've include a pdf copy of our case file. In brief, Austin PD originally analyzed the evidence in October 2010 and found 15.24 grams of material containing cocaine. For unknown reasons, the evidence was re-analyzed in August 2011 and found to be 8.65 grams of material containing benzoylecgonine (a metabolite of cocaine). We have not been told why the case was re-analyzed.

During research, I did determine that it is possible for cocaine to metabolize into benzoylecgonine, if the material is not dried properly during manufacturing. It should be noted that the original analyst's notes indicated the sample was moist. However, the sample lost 43% of its mass (6.59 grams) during storage. This cannot be explained by the chemical reaction of cocaine. I was extremely concerned that either material containing cocaine could have leaked and contaminated other samples, or significant amounts of evidence has been lost. I believe that most laboratories would treat this with a significant investigation and document through corrective action reports. As part of my subpoena request, I asked for all corrective actions, direct or indirect, generated in relation to this case. Austin PD crime lab reported that no corrective actions were generated. Our subsequent analysis of the evidence revealed, of course, benzoylecgonine, but also cocaine. Upon review of the second Austin examination (August 2011), it was determined that they did find cocaine and compared to a standard, yet still did not report the presence.

Ultimately, I received authorization from the client attorney to discuss this case with Austin PD crime lab. On December 13th, 2011, I spoke with Tony Arnold about the issues above. I sent Mr. Arnold a copy of our case file. While Mr. Arnold expressed concern over the information I gave him, I have not been provided any additional information".

Response:

This case involves the submission of crack cocaine rocks for analysis. The lab received the evidence from the Evidence Control Section on September 29, 2010. At the time of the analysis records indicate that the sample was moist upon receipt. The evidence was analyzed and a report issued indicating a weight and the presence of cocaine. The evidence was then submitted to the Evidence Control Section where it was stored in ambient temperature storage for approximately one year.

In August of 2011 a request was received by the Evidence Control Section to allow viewing of the evidence by defense council. When the sample was pulled for defense attorney viewing, it was observed that the rocks had degraded. Chemistry section staff was notified of the condition of the sample at which time it was released back to the laboratory for re-analysis. Upon the lab obtaining the evidence the analyst described in his case notes the sample as a "brown liquid sludge" and there was no compromise of the packaging noted. The analysis was conducted and it was determined that the sample was comprised primarily of cocaine breakdown product. It was also noted that there was a considerable weight loss to the item from the initial analysis. Based on prior lab experience and DEA published data no corrective action was taken as degradation and significant weight loss of a sample in this condition was not unexpected. The analyst reported the final analysis as Benzoylecgonine, which is a degradation product of cocaine. Also noted was a trace of cocaine but the supporting secondary data required by chemistry protocols could not be obtained, therefore, the cocaine was not reported.

Attached is the case folder to include the referenced DEA publication and chemistry laboratory policy on required analytical techniques for your review.

Issue #2 – Lab #10-13202

From the Complaint: "Immediately after finishing the above case, we received another case reported by Austin PD. We have been told that Austin PD reported this as material other than marihuana containing THC. In Texas, this is a PG1 group and carries a stiff penalty compared to marihuana, a PG3 group. Before reporting "material other than marihuana", it must be very careful to clearly establish that the sample is NOT marihuana. It should have little to none of botanical characteristics of marihuana. On re-examination of this case, we determined that the material was comprised almost entirely of cystolithic trichomes, non-cystolithic trichomes, and glandular trichomes. In other words, this sample was simply compressed siftings of marihuana and not "material other than marihuana". I have included one of the photomicrographs we took of the material; I can send more if you desire. I am concerned that the evidence was not properly examined at the Austin lab. Unfortunately, IFL did not receive permission to discuss this case with Austin PD until only recently. I will defer to ASCLD/LAB before I contact Austin PD again".

Response:

Mr. Fazio makes the following statement; "Before reporting "material other than marihuana", it must be very careful to clearly establish that the sample is NOT marihuana. It should have little to none of botanical characteristics of marihuana." Our laboratory agrees with that statement, however, after receiving the complaint, the APD laboratory supervisor re-examined the sample and concurs with the initial finding of our analyst. Based on our attached procedures and SOP's we are confident that the botanical characteristics are not present in this sample in a sufficient quantity to report the sample as marihuana. As a result our laboratory reported THC as prescribed by our current policy.

Attached is the case folder, chapters of the chemistry section SOP and procedure manual pertaining to this case for your review.

Issue #3 – Lab #09-12695

From complaint: "IFL received a court-ordered request to re-weigh a large number of MDMA tablets. However, Austin PD sent only ½ of the tablets. Austin PD claimed that their policy was to retain ½ of the exhibit, in case there was a disagreement between the defense lab and their own. However, they have not consistently applied this policy with the two other cases described above. IFL was unable to complete the case for the defense".

Response:

The lab was notified of the court order in June of 2011. The sample was obtained from the Evidence Control Section and was divided by the analyst and sent to IFL July 8, 2011. Ron Fazio contacted the lab on July 26, 2011 requesting the remaining half of the sample. He was advised of our policy and stated he would get with the defense attorney to remedy the issue. On July 26,

2011 the lab discussed the lab's procedures with the prosecutor. She advised that the matter would be addressed with the Judge. On August 4, 2011 the laboratory received word from the prosecutor that the Judge had ruled that Integrated Forensics must come to APD in order to weigh the retained sample. Integrated Forensics never traveled to Austin to perform the weighing that we are aware of.

Laboratory Management discussed this issue with Buddy Meyer, First Assistant Prosecutor for the Travis County District Attorney's office. Because the laboratory followed protocol and the fact that the Judge's ruling supported that the outside testing facility must conduct total weight determination in Austin, he agrees with the laboratory that there is no cause for complaint. Future discussion will be held with the Travis County District Attorney's office to review the policy in total and make modifications if deemed necessary.

Mr. Fazio's complaint also states that the laboratory is inconsistent with regards to application of our outside testing policy. He states that in two of the three cases cited above, the total sample was released. Integrated Forensics received representative samples from both lab case #09-12695 and #10-13202. The only case in which the total sample was submitted was lab #10-12068. This was determined as the best course of action on this case due to the degradation of the sample.

Attached are the policies in place for the laboratory on the release of narcotics evidence for outside testing and the case folder which includes the email communications between the laboratory and the prosecutor's office.

The Austin Police Department welcomes an audit of our Chemistry Section if you deem that a proper course of action.

If you need additional information please contact me.

Sincerely,

A handwritten signature in blue ink, reading "William Gibbens", is written over a horizontal line.

William Gibbens, Manager
Forensic Science Services
Austin Police Department
(512) 974-5118

EXHIBIT G

TEXAS DEPARTMENT OF PUBLIC SAFETY

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CRIME LABORATORY SERVICE MSC 0460

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January 11, 2012

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Buddy Meyer
Assistant District Attorney
Travis County District Attorney's Office
PO Box 1748
Austin, TX 78767

Dear Mr. Meyer:

This letter is to complete the report of my investigation into the complaint by Debra Stephens dated December 27, 2011, against the Austin Police Department (PD) Forensic Laboratory. This report supplements my letter to you dated January 6, 2012.

This report will focus on the following issues related to the Austin PD lab practice of issuing "preliminary results" on controlled substance cases. Those issues include:

- 1) Were Austin PD lab policies followed regarding the sufficiency of the testing performed prior to release of the preliminary results?
- 2) Were Austin PD lab policies followed regarding the review of test results prior to release of the preliminary results?
- 3) Were accreditation requirements regarding sufficiency of testing followed prior to the release of preliminary results?
- 4) Were accreditation requirements regarding case review followed prior to releasing preliminary results?

To adequately answer these questions, I contacted and visited the Austin PD laboratory on January 10; meeting with Lab Director Bill Gibbens, Quality Assurance Manager Tony Arnold and others. The visit was to obtain the Austin PD lab policies regarding testing and review requirements they had affecting testing controlled substance evidence and issuing preliminary results to the police investigator. Note that in the Austin PD lab, policies change over time; therefore, each revision of a policy has a version number, which is the date it went into effect. Also during this visit, the complete case records were reviewed on four drug cases.

Question 1: The only written policy the Austin PD lab provided regarding preliminary reports deals with the review required. This policy commenced February 15, 2009. No policy addressed the required level of testing of the drugs prior to issuing preliminary results. Upon interviewing two drug analysts, it appeared that the practice was that a drug exhibit would undergo preliminary tests prior to the issuance of preliminary results. Then, later, usually within ten days, the remaining testing of the evidence would be completed, documented, reviewed and the lab report issued. Without having a written policy, it was not possible to evaluate whether the analysts were meeting the requirements of that policy. We were advised that current practice is to no longer issue preliminary results, but to complete the full analysis of drugs and then follow policy in issuance of the full laboratory report.

On case #L100183, additional records were provided that reflected that some testing was conducted on January 31, 2010; including identification of Codeine in exhibit #11. Documented records of testing of the Cocaine exhibits commence on February 1, 2010. Note that it was reported by the two drug analysts that presumptive chemical tests on drug items on rush cases were not always documented on the day they were performed, but may be entered into the LIMS on a later date. For this case, the weights of the Cocaine exhibits were recorded on February 3, 2010 and spot tests recorded in the LIMS on February 8, 2010. Instrumental tests on the Cocaine exhibits were conducted on February 1 – February 2, 2010.

On Case #L1006319, all documentation of testing was dated on June 9, 2010. The records reflect that the GC/MS testing was conducted on instrument #1. It would normally be possible to go back to the computer on a GC/MS instrument to confirm that a GC/MS was performed on the exhibits on this case on the May 30, 2010 date of the preliminary results notice. However, this GC/MS instrument has been taken out of service since that date. Analysts can only presume that those tests were performed on that date, then re-run on June 9, 2010; overwriting the original test record.

Question 2: The Austin PD lab policy regarding case file review that went into effect February 15, 2009, states "All preliminary reports issued to a detective for filing of charges may be administratively reviewed by the analyst and stated so in the preliminary report". The policy further states that "the supervisor is responsible for ensuring that 75% of cases are technically reviewed". This later policy apparently relates, however, to cases in which a final full lab report is being issued; not a preliminary result.

To answer this question, records on four cases were reviewed: Case #L1001183; #L0807444; #L1006319 and #L1001182. Note that Austin PD lab case files are all stored electronically within their laboratory information management system (LIMS). These case records reflect on the preliminary results document that the report was administratively reviewed by the analyst who conducted the analysis. Therefore, the staff was meeting the lab's policy on three of these cases that were examined during 2010. The policy in effect in 2008, when case #L0807444 was worked, did not require a review; however, the preliminary results document reported that this case was administratively reviewed.

Questions 3 & 4: The Austin PD lab is accredited by ASCLD/LAB under their Legacy program, not their International or ISO 17025 program. The Legacy program prescribes requirements for testing, records, and reviews before issuing a full laboratory report, but does not state requirements for issuing preliminary results. In the International program, it is permissible to issue preliminary results as long as those notices are recorded; which Austin PD lab was doing. This means the Austin PD lab was not meeting all of the Legacy standard 1.4.2.17 for sufficiency of examination documents on the date preliminary results were issued, but that is not required. They did meet this standard by the date the final lab report was issued. It is significant to note that the records show that final reports on all but one of the drug cases in the list of cases provided by Ms. Stephens were issued within ten days of the preliminary result notices.

Finally, I wish to correct the last paragraph in my letter dated January 6, 2012. The Austin PD lab refers to its communication on rush cases as preliminary results. That is appropriate and already differentiates the document from a laboratory report. Also, under the ASCLD/LAB Legacy Accreditation program, under which Austin PD lab is accredited, the examining analyst on a case may still perform the administrative review of their case.

Sincerely,



D. Pat Johnson
Deputy Assistant Director
Crime Lab

TEXAS DEPARTMENT OF PUBLIC SAFETY

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January 6, 2012

Buddy Meyer
Assistant District Attorney
Travis County District Attorney's Office
PO Box 1748
Austin, TX 78767

Dear Mr. Meyer:

I have reviewed the documents you forwarded on January 5, 2012, that your office received from Debra Stephens. Below are my responses to her allegations:

- 1) Ms. Stephens alleged that the lab director did not meet required qualifications. ASCLD/LAB in their supplemental accreditation requirement #4.1.5.a addresses qualifications required of a lab director. Note that they have approved accreditation of the Austin Police Department in 2005 and again in 2010; therefore, they believe Mr. Gibbens meets their requirements and I would judge the same.
- 2) Ms. Stephens alleged that the analysis and reporting on controlled substance cases does not meet both Austin Police Department procedures and ASCLD/LAB accreditation requirements. This appears to relate to the "Preliminary Reports" issued on some rush cases. Files from three cases were submitted to demonstrate the alleged violations.

From my review of these cases, appropriate chemical analysis of samples was performed prior to issuance of the final laboratory report. The documents provided on two of the cases; however, do not show any testing before the "Preliminary Report" was e-mailed. I suspect there may be more records in these two case folders and those should be reviewed (cases L1001183 and L1006319) before deciding whether this is a problem.

The third case, L0807444, shows sufficient preliminary testing was completed before the preliminary report was e-mailed.

- 3) Ms. Stephens alleges that the appropriate review of controlled substance analyses was not conducted before the reports were issued.

The Austin Police Department lab policy provided does not specify when the review must be performed, nor did any case records indicate review dates. Therefore, no judgments on this allegation can be made.

ASCLD/LAB Accreditation requires laboratory reports to be administratively reviewed before issued. Prior to April 2011, they could be reviewed by the analyst examining the case. I am unaware of what the Austin Police Department lab requirements are on how many cases require technical review, but apparently it is not required on all cases. This allegation is currently not substantiated.

Based on a conversation with an ASCLD/LAB staff member, it is recommended that the Austin Police Department lab not call "Preliminary Reports" by the term "Reports". They could be referred to as Preliminary Findings to more effectively distinguish them from the actual lab report. Lab reports now require review by someone other than the examining analyst before they are issued.

Sincerely,



D. Pat Johnson
Deputy Assistant Director
Crime Lab

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FORENSIC SCIENCE DIVISION
FORENSIC CHEMISTRY SECTION
DRUG PROCEDURES MANUAL**

- g. Record the after analysis weight for bulk case and indicating if this is net or gross weight.

1.7 Basic Analytical Scheme

- a. The basic analytical scheme for the analysis of suspected controlled substances, dangerous drugs and other related compounds consists of sample preparation and extraction or isolation procedures in various combinations with the following tests and instrumentation. Reference specific analytical tests and special preparatory or extraction procedures used.
- b. The analyst must determine the appropriate sampling techniques, methods of recovery, extraction procedures and instrumental analysis to be used for identification of a compound on a case-by-case basis.
- c. Unknown samples should be compared to in house reference drug standards. If no in house reference is available, then reference data from approved literature should be included in documentation.
- d. The required number of analytical techniques is on an item per item and case per case basis.
- e. Drug exhibits will not be routinely quantitated.
- f. Evidence sampling techniques are subject to the size of sample, and type of sample such as liquid, powder, plant material.
- g. When sample size allows, separate samplings should be used for each test.
- h. When sample size is limited, additional measures should be taken to assure that results correspond to the correct sample.
- i. For exhibits containing a trace amount of sample that may be consumed in the analysis, a method blank must be prepared using the same parameters as the evidence sample and analyzed prior to analyzing the trace evidence sample.
- j. Each test will be documented on the worksheet.

1.8 Required Analytical Techniques

- a. Categories of Analytical Techniques
 - i. Techniques for analysis of drug sample may be classified into three categories based on their discriminating power. The list below provides examples of these techniques listed in decreasing power.
 - Category A: FTIR, GC/MS
 - Category B: GC (retention time), Pharmaceutical Identifiers
Cannabis Only: Macroscopic/Microscopic Examination
 - Category C: Color Tests, UV/Vis, UV/Vis Quantitation
- b. One Category A technique is required and one other technique from Category A, or any combination of two techniques from Categories B or C, may be used. The combination of techniques used must identify the specific drug present and preclude a false positive identification.

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- c. When sample properties (chemical or physical) allow, a separate sample must be used for each technique for quality assurance reasons.
- d. When sample properties are limited, the same sample/technique may be used in analysis. A Deviation Request Form must be filled out if the minimum standards listed in part b cannot be met.
- e. For the use of any method to be considered of value, test results must be "positive". "Negative" test results provide useful information for ruling out the presence of a particular drug or drug class; these results have no value toward establishing the forensic identification of a drug.
- f. In cases where hyphenated techniques are used (e.g. GC-MS), they will be considered as separate techniques provided that the results from each are used.
- g. Marihuana:
 - i. (1) Category B (Macroscopic/Microscopic Examination) and (1) Category C (Duquenois-Levine).
 - ii. If macroscopic/microscopic identification can not be confirmed: (1) Category A (GC/MS) and (1) Category C (Duquenois-Levine)
- h. More techniques may be required on an item upon review of analytical data.

1.9 Quantitation:

Except for the below listed guidelines, drug exhibits will not be routinely quantitated.

- a. Quantitation guidelines for Federal cases:
 - i. Methamphetamine, Cocaine salt, and Heroin for items over 1 gram
 - ii. Cocaine base and Ecstasy will not be quantitated.
 - iii. A minimum of two independent samples will be used to determine concentration
- b. Samples from clandestine laboratories will be quantitated as needed for prosecution.
- c. Samples to be released as training aids (dog dope) or department sanctioned narcotic reversal operations
- d. A special request for quantitation from the Prosecutor may supersede these guidelines.
- e. A special request from APD management for investigative purposes.

1.10 Evidence Sampling Techniques

- a. Powdered (Solid) Samples
 - i. Take care to ensure that a homogeneous sample is collected for analysis.
 - ii. If more than one color or type of substance is present, either homogenize the sample by grinding in a clean mortar with a clean pestle or physically separate the particles, using forceps or another method to collect portions of each type to be analyzed separately.
- b. Liquid Samples
 - i. Take care to ensure that a homogeneous sample is collected for analysis.

DISCUSSION

The written technical procedures (1.4.2.7) should include descriptions of sample preparation methods, controls, standards, and calibration procedures. They should also include a discussion of precautions, possible sources of error, and literature references. Reagents must be labeled with the identity of the reagent and the date of preparation or "lot" number. Records must be maintained identifying who made the reagent and that it was tested before use to check the reliability of the reagent. The routine documented use of appropriate controls is a suitable method to ensure the continued reliability of reagents. Stored reagents which are not used routinely, i.e. monthly, must be retested before subsequent use. Validated shelf life data may be used to determine how often infrequently used reagents must be tested. This will give the examiner the necessary resource material to support written conclusions and expert testimony (1.4.2.9 to 1.4.2.10).

Although many acceptable procedures may exist to perform a particular examination, considerable variations in case samples require that forensic scientists have the flexibility to exercise discretion in selecting the method most appropriate to the problem at hand. The laboratory director needs to ensure that the procedures used meet acceptable scientific standards [e.g., the use of positive and negative controls (1.4.2.8)]. Additionally, standards and reagents used must be of satisfactory quality. A certificate of analysis received with a drug or other standard will generally serve to establish the quality of the standard (1.4.2.9).

Instruments/equipment should be adequate for the procedures used.

- 1.4.2.11 (I) ARE THE INSTRUMENTS/EQUIPMENT ADEQUATE FOR THE PROCEDURES USED?

Instruments/equipment should be maintained in proper working order.

- 1.4.2.12 (I) ARE THE INSTRUMENTS/EQUIPMENT IN PROPER WORKING ORDER?

Instruments/equipment must be properly calibrated and calibration records maintained for all calibrated instruments.

- 1.4.2.13 (E) ARE THE INSTRUMENTS/EQUIPMENT PROPERLY CALIBRATED?

The laboratory must create and maintain a uniquely identified case record for all administrative and examination documentation generated and/or received by the laboratory for each case involving the analysis of evidence.

- 1.4.2.14 (E) DOES THE LABORATORY CREATE AND MAINTAIN A UNIQUELY IDENTIFIED CASE RECORD FOR ALL EXAMINATION AND ADMINISTRATIVE DOCUMENTATION GENERATED AND/OR RECEIVED BY THE LABORATORY FOR EACH CASE INVOLVING THE ANALYSIS OF EVIDENCE?

DISCUSSION

A laboratory case record consists of both examination documentation and administrative documentation which may be received or generated by the laboratory. The laboratory must maintain each case record in a designated location or locations, as specified by its policy, under a unique case identifier, usually a laboratory case number.

Administrative documentation includes laboratory reports, records of case-related conversations, evidence

- 1.4.2.16 (E) ARE CONCLUSIONS AND OPINIONS IN REPORTS SUPPORTED BY DATA AVAILABLE IN THE CASE RECORD, AND ARE THE EXAMINATION DOCUMENTS SUFFICIENTLY DETAILED SUCH THAT, IN THE ABSENCE OF THE EXAMINER(S), ANOTHER COMPETENT EXAMINER OR SUPERVISOR COULD EVALUATE WHAT WAS DONE AND INTERPRET THE DATA?
- 1.4.2.17 (E) IS EXAMINATION DOCUMENTATION OF A PERMANENT NATURE AND IS IT FREE OF OBLITERATIONS AND ERASURES?

DISCUSSION

Acceptable ways to document the basis for conclusions derived from evidence examination, include, but are not limited to: a narrative description of the examination process and observations made, photographs, photocopies, diagrams, drawings, worksheets which provide spaces or sections for the insertion of data or other observations made during various steps of the examination process, or a combination of two or more of these approaches.

Examination documentation, such as case notes and records of observations whether electronic or hard copy, are subject to subpoena or discovery and must be of a permanent nature. Generally, handwritten notes and observations must be in ink. Exceptions to this requirement may be made when environmental conditions, such as extreme cold or rain, prevent the use of inks. Pencil (including color) may be appropriate for diagrams or making tracings. Nothing in the examination documentation may be obliterated or erased. Changes, alterations and additional notations, including interlineations, made in case notes must be initialed by the person making the additions. Dates should be recorded throughout the documentation to indicate when the work was performed, but at a minimum, the starting and ending dates of the analysis must be recorded. When instrumental analyses are conducted, operating parameters must be recorded. Laboratories which maintain examination documentation in an electronic form must have procedures which provide for equivalent tracking of changes to the documentation, once the documentation has been stored.

Abbreviations and symbols are acceptable in examination documentation, if the meaning of the abbreviations and/or symbols are readily comprehensible to a reviewer and the meaning of the abbreviations or symbols are clearly documented in the laboratory's procedures.

It is recommended that when examination documentation consists of multiple pages, a page numbering system indicating total number of pages be used (e.g., page __ of __).

Latent Print Examination Documentation

In the latent print discipline, the examination documentation should include each examination activity conducted, the sequence of those activities and the results of the activities. The activities can include the development techniques applied, controls or reagent checks used in development techniques, photography/digital imaging used, any AFIS searches conducted, known exemplar capture and/or retrieval, comparisons conducted and conclusions reached.

It is not required that the examination documentation provide a detailed description of the thought process involved in the analysis, comparison or evaluation. However, examination documentation must include which prints were analyzed, compared, evaluated and conclusions reached. Examination documentation must also acknowledge the existence and disposition of any captured latent prints which are not analyzed, compared or evaluated.

Written reports must be generated for all analytical work performed on evidence by the laboratory and must contain the conclusions and opinions that address the purpose for which the analytical work was undertaken. The significance of associations made must be communicated clearly and qualified properly. The name of the author(s) must appear in the report.

- 1.4.2.19 (E) DOES THE LABORATORY GENERATE WRITTEN REPORTS FOR ALL ANALYTICAL WORK PERFORMED ON EVIDENCE, AND DO THE REPORTS CONTAIN THE CONCLUSIONS AND OPINIONS THAT ADDRESS THE PURPOSE FOR WHICH THE ANALYTICAL WORK WAS UNDERTAKEN?
- 1.4.2.20 (E) WHERE ASSOCIATIONS ARE MADE, IS THE SIGNIFICANCE OF THE ASSOCIATION COMMUNICATED CLEARLY AND QUALIFIED PROPERLY IN THE REPORT?
- 1.4.2.21 (E) DOES THE NAME OF THE AUTHOR(S) APPEAR IN THE REPORT?

DISCUSSION

Reports (hardcopy or the electronic equivalent thereof) must contain conclusions and opinions that address the purpose for which the analytical work was undertaken. Analytical work requiring a report refers to analyses involving evidence that are conducted for the purpose of resolving an issue or answering a question in a case, and are usually brought to the laboratory's attention by means of a request for service by a customer. Analytical work requiring a report does not include research activities, training exercises, validation studies, or ten print record intercomparisons.

Activities that a laboratory undertakes for the purpose of constructing an individual characteristic database or maintaining the quality and/or effectiveness of information in such a database (e.g. consolidation of 10 print images in AFIS; DNA profiling of biological reference samples of known individuals for inclusion in an offender database; addition of test fired cartridge case images in NIBIN) are not considered analytical work under this standard.

There may be valid reasons for not producing a report. The laboratory must have a written policy describing such reasons or conditions for not producing a report of analytical work (e.g. when a case is adjudicated before the work or report is completed, or where the customer cancels a request for work before it is completed).

The significance of terms that convey the strength of an association (e.g. "consistent with", "match", "common source") must be communicated in the report, properly qualified and consistent with established laboratory interpretation standards. When no definitive conclusions can be reached (e.g. results are "inconclusive"), the reason must be clearly stated and consistent with laboratory interpretation standards.

Reports must identify the laboratory, bear the date the report was prepared, and must be marked with a unique identifier such as a laboratory case number. The report must contain the name and signature (or secure electronic equivalent) of the author(s) responsible for the conclusions and opinions expressed in the report. The author(s) of the report must have conducted, participated in, observed, supervised, or thoroughly reviewed the documentation of the examination or testing.

Audit Log Keywords for Search:

DCGROSS = Gross Weight before Analysis

DCTARE = Tare Weight

DCWAA = Net Weight after analysis

DCM = Marquis results

DCDUQ = Duquenois results

DCUVAC = UV Acid results

DCGCMS = GC/MS substance detected

DCFTIR = FTIR substance detected

DCRESULT = Substance Identified

Control F

TEXAS DEPARTMENT OF PUBLIC SAFETY

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January 30, 2012



COMMISSION
ALLAN B. POLUNSKY, CHAIR
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CARIN MARCY BARTH
A. CYNTHIA LEON

Buddy Meyer
Assistant District Attorney
Travis County District Attorney's Office
PO Box 1748
Austin, TX 78767

Dear Mr. Meyer:

Records were obtained from the Austin Police Department (PD) crime laboratory on the full list of twenty-three drug cases that were cited in the complaint letter your office received from Debra Stephens, dated December 27, 2011.

While you have two letters from me discussing four of these twenty-three cases; this report will address all twenty-three cases.

Attached is a spreadsheet which lists the cases, states when a preliminary result was issued, when the actual lab report was issued and when the testing was conducted.

The Austin PD laboratory stores all records electronically in a Laboratory Information Management System (LIMS); retaining no paper documents. Dates of when data is entered into the LIMS are recorded. These drug cases were reviewed by either me or Diana Salas of the Department of Public Safety (DPS) Austin crime laboratory and we both formerly analyzed drug evidence for periods of between five and ten years.

Ultimately, it is our opinion that the testing of evidence on these cases fully supports the results as stated in the issued laboratory reports, with one exception: on lab case, #L-1000034, the compound reported initially in January 2010 was determined in a supplemental test and reported in August 2010 to not be present in the evidence. Note that the compound initially reported was not a controlled substance. On one case, # L-1006701, there were no chemical tests performed; however, that limitation is clearly stated in the laboratory report. (Identification based on physical and pharmaceutical markings.)

Regarding the preliminary results issued; in some cases, the dates that the weights of drugs and the testing of those drugs were entered into the LIMS were after the date that the preliminary results on those samples were issued. See each specific case to ascertain which cases fit this category. It was explained by Austin PD laboratory Quality Assurance Manager Tony Arnold that written notes of weights and chemical spot tests, as well as microscopic tests of marijuana, were disposed of when the data was transcribed into the LIMS. That practice is no longer accepted at the Austin PD laboratory. In my opinion, it would not meet ASCLD/LAB accreditation standards under 1.4.2.16 regarding generation and maintaining records to support conclusions. The laboratory has discontinued the practice of issuing preliminary results and now issues only the laboratory report at the conclusion of all testing.

Sincerely,

D. Pat Johnson
Deputy Assistant Director
Crime Lab

Austin P.D. Case Review

Case #	Case Received	Preliminary Report Date	Full Lab Report Date	Substance Identified	Analysis Documentation
L-0900062	01/03/09 14:14	01/03/09 14:25 GH – e-mail 15:30 hrs	01/05/2009 Draft 01/06/2009 Final	#5 – Alprazolam #6 – Cocaine	<u>Weights entered 1/3/09 @ 2:55 P</u> <u>Preliminary</u> #5: Pharm ID (01/03/09) #6: CoSCN – POS (01/03/09) <u>Complete Analysis –</u> #5: UV Acid - Pos, GC/MS, Pharm ID (0.27g used) (1/5/09) #6: CoSCN Neat - Pos, P-DMBA - Neg, UV Acid Pos, GC/MS (0.01g used) (1/5/09)
L-0900075	01/03/09	01/03/09 GH- e-mail 15:30 hrs	01/05/2009 Draft 01/06/2009 Final	Marihuana	<u>Weights entered 01/03/09 @ 3:21 pm</u> Results for Microscopic examination and Duquenois entered 01/05/09 @ 1:52pm
L-0900077	01/03/09	01/03/09 GH – e-mail 15:30 hrs	01/05/2009 Draft 01/06/2009 Final	Marihuana	<u>Weights entered 01/03/09 @ 3:15 pm</u> Results for Microscopic examination and Duquenois entered 01/03/09 @ 3:15pm

Austin P.D. Case Review

Case #	Case Received	Preliminary Report Date	Full Lab Report Date	Substance Identified	Analysis Documentation
L-0900078	01/03/09	01/03/09 GH – e-mail 15:30 hrs	01/05/2009 Draft 01/06/2009 Final	#1 – MDMA 0.26g #2 – Marihuana 20.27g/0.71 ounce	<u>Weights entered 01/03/09</u> <u>Preliminary-</u> #1: SNP (1/3/09), Marquis (1/3/09) #2: No information entered on 01/03/09 <u>Complete Analysis-</u> #1: SNP (1/3/09), Marquis (1/3/09), UV Acid (1/5/09), GC/MS (1/5/09) #2: Microscopic (1/5/09), Duquenois (1/5/09) <u>Weights entered on 04/20/09</u>
L-0905372	04/20/09 10:31-10:37	04/19/2009 GH – e-mail 16:30 hrs	04/20/09 Draft 04/22/09 Final	#1----- #1.1 - Marihuana #1.2 - Marihuana #1.3 - Marihuana #2----- #2.1 - Codeine #2.2 – Contains Codeine #2.3 – Contains Codeine	<u>Preliminary-</u> #1.1 – 1.3 No information entered on 04/19/09 #2.1 - 2.3 No information entered on 04/19/09 <u>Complete Analysis</u> #1.1 – 1.3 Microscopic Examination and Duquenois (entered 04/20/09) #2.1 – 2.3 GC/MS – MS & Retention time comparison Data included in case file acquired on 04/20/09

Austin P.D. Case Review

Case #	Case Received	Preliminary Report Date	Full Lab Report Date	Substance Identified	Analysis Documentation
L-0908850	06/27/09	GH -----	07/02/09 Final 07/02/09 Draft	#1 – Marijuana #2 – No Analysis #3 – Marijuana #4 – Marijuana #5 – No Analysis #6 – No Analysis #7 – Boldenone Undecylenate #8 – Testosterone Enanthate	<u>No Preliminary Results Requested</u> <u>Complete Analysis</u> #1, 3, 4: Microscopic Examination & Duquenois (06/30/09, 07/01/09) #7 (three vials - a, b, c)– GCMS – two methods (STERIODS.M, STERIODS30.M) #8 (four vials – a, b, c, d) – GCMS – two methods (STERIODS.M, STERIODS30.M) & Retention time
L-0908887	06/29/09	06/29/09 GH – e-mail 07:15 Only Item#1	06/29/09 Draft 06/29/09 Final	#1 - Dihydrocodeinone #2 - Marijuana	<u>Net weight entered on 6/29/09 10:16A</u> <u>Preliminary #1</u> UV Acid & Base (06/28/09, 12:51 pm) <u>Complete Analysis:</u> #1: UV Acid (06/29/09, 6:42 am), GCMS (06/29/09, 9:31) + Retention time #2: Microscopic examination & Duquenois (06/29/09)

Austin P.D. Case Review

Case #	Case Received	Preliminary Report Date	Full Lab Report Date	Substance Identified	Analysis Documentation
L-0909128	07/03/09	07/03/09 GH – e-mail 11:00	07/07/09 Final 07/03/09 Draft	#1 - Not suitable for Analysis #2 – Heroin Trace	<u>Preliminary #2</u> UV Acid (7/3/09, 10:09 A), GC/MS & Retention time (7/3/09, 10:28) <u>Complete Analysis:</u> Same as for preliminary results
L-0913857	10/11/09	10/11/09 GH – e-mail 11:45 hrs	10/13/09 Final 10/13/09 Draft	#1 No Controlled Substances Detected	<u>Weights added on 10/11/09 @ 10:34 AM</u> <u>Preliminary #1</u> <u>Spot Tests:</u> Marquis (10/11/09, 10:34) SNP (10/11/09, 10:34) CoSCN – Acid & Neat (10/11/09, 10:34) P-DMBA (10/11/09, 10:34), UV Acid & Base (10/11/09, 9:21), GC/MS – two methods (10/11/09, 9:49), FTIR – direct (10/11/09, 9:30) <u>Complete Analysis:</u> Same as for preliminary results
L-0915854	11/21/09	11/21/09 RS – e-mail 10:54 A	11/23/09 Draft 11/23/09 Final	Phencyclidine	<u>Weights added on 11/23/09, 2:42 pm</u> <u>Preliminary:</u> UV Acid (11/21/09, 10:28A) GC/MS (11/21/09, 10:51) <u>Complete Analysis:</u> Same as for preliminary results

Austin P.D. Case Review

Case #	Case Received	Preliminary Report Date	Full Lab Report Date	Substance Identified	Analysis Documentation
L-1000034	01/02/10	01/02/10 KS – e-mail 3:24 P	01/04/10 Draft & Final by KS 8/14/10 Draft & Final by DS	Preliminary: Quetiapine (Called on GCMS data, possible carry- over) Final: No controlled substances detected	<u>Weights added on 01/02/10 @ 3:22 P & 1/4/10 2:15 P (First Analysis)</u> <u>Preliminary:</u> UV Acid – 2 extractions (1/2/10, 2:15 P, 2:35 P), GCMS (01/02/10, 2:53) <u>Complete Analysis</u> Additional UV (1/4/10, 10:50 A), GCMS (1/4/10, 10:24 A) FTIR (1/4/10, 10:01) Inconclusive <u>Additional Analysis (Second analyst -DS)</u> GC/MS (08/14/10, 9:24, 10:26) FTIR (08/14/10, 10:47)
L-1001182	1/31/10	1/31/10 GH – e-mail 13:00 hrs	2/3/10 Draft 2/9/10 Final	#1 – Marijuana #2 – Codeine cough syrup with promethazine	<u>All weights entered on 2/3/10, 2:03 P</u> <u>Preliminary</u> #1 – No information entered on LIMS #2 – GCMS ran on 1/31/10, 12:24 <u>Complete Analysis</u> #1 - Microscopic & Duquenois (entered on 2/3/10, 2:04 P) #2 – UV Acid (2/1/10, 11:22 A, 11:24 A) , GC/MS & Retention time (entered on 2/3/10, 2:03 P)

Austin P.D. Case Review

Case #	Case Received	Preliminary Report Date	Full Lab Report Date	Substance Identified	Analysis Documentation
L-1001183	1/31/10	1/31/10 GH- e-mail 13:00 hrs	Final 02/09/10	#1 – Cocaine #2 – 10 – Cocaine #11 – Codeine cough syrup with promethazine	<u>Weights entered on 2/3/10 @ 11:41 A</u> <u>Preliminary Results</u> #1-10 – No information entered on 1/31/10 #11 – GCMS (1/31/10, 12:29) <u>Complete Analysis</u> #1 CoSCN – POS (entered on 2/8/10, 3:06 P) P-DMBA – NEG (entered on 2/8/10, 3:06 P) GCMS [Cocaine & Tetramisole] (2/1/10, 16:41) Retention time – Cocaine FTIR – Cocaine (2/1/10, 12:33) #2 CoSCN – POS (entered on 2/8/10, 3:06 P) P-DMBA – NEG (entered on 2/8/10, 3:06 P) GCMS [Cocaine & Tetramisole] (2/1/10, 17:21) Retention time – Cocaine FTIR – Cocaine (2/1/10, 12:35) #3 CoSCN – POS (entered on 2/8/10, 3:06 P) P-DMBA – NEG (entered on 2/8/10, 3:06 P) GCMS [Cocaine & Tetramisole] (2/1/10, 18:00) Retention time – Cocaine FTIR – Cocaine (2/1/10, 12:37) #4 CoSCN – POS (entered on 2/8/10, 3:06 P) P-DMBA – NEG (entered on 2/8/10, 3:06 P)

Austin P.D. Case Review

Case #	Case Received	Preliminary Report Date	Full Lab Report Date	Substance Identified	Analysis Documentation
					GCMS [Cocaine & Tetramisole] (2/1/10, 18:40) Retention time – Cocaine FTIR – Cocaine (2/1/10, 12:41) #5 CoSCN – POS (entered on 2/8/10, 3:06 P) P-DMBA – NEG (entered on 2/8/10, 3:06 P) GCMS [Cocaine & Tetramisole] (2/1/10, 19:20) Retention time – Cocaine FTIR – Cocaine (2/1/10, 12:47) #6 CoSCN – POS (entered on 2/8/10, 3:06 P) P-DMBA – NEG (entered on 2/8/10, 3:06 P) GCMS [Cocaine & Tetramisole] (2/1/10, 19:40) Retention time – Cocaine FTIR – Cocaine (2/1/10, 12:49) #7 CoSCN – POS (entered on 2/8/10, 3:06 P) P-DMBA – NEG (entered on 2/8/10, 3:06 P) GCMS [Cocaine & Tetramisole] (2/1/10, 20:40) Retention time – Cocaine FTIR – Cocaine (2/1/10, 12:51) #8 CoSCN – POS (entered on 2/8/10, 3:06 P) P-DMBA – NEG (entered on 2/8/10, 3:06 P) GCMS [Cocaine & Tetramisole] (2/1/10, 21:00) Retention time – Cocaine FTIR – Cocaine (2/1/10, 12:52)

Austin P.D. Case Review

Case #	Case Received	Preliminary Report Date	Full Lab Report Date	Substance Identified	Analysis Documentation
					#9 CoSCN – POS (entered on 2/8/10, 3:06 P) P-DMBA – NEG (entered on 2/8/10, 3:06 P) GCMS [Cocaine & Tetramisole] (2/1/10, 21:59) Retention time – Cocaine FTIR – Cocaine (2/1/10, 12:54) #10 CoSCN – POS (entered on 2/8/10, 3:06 P) P-DMBA – NEG (entered on 2/8/10, 3:06 P) GCMS [Cocaine & Tetramisole] (2/1/10, 22:39) Retention time – Cocaine FTIR – Cocaine (2/1/10, 12:56) #11 UV Acid (2/1/10 @ 1:44, 1:46) GCMS & Retention Time (2/1/10, 13:56)
L-1001185	1/31/10	1/31/10 GH – person 12:45 hrs	Final 02/03/10	#1 – Marijuana #2 – Methylenedioxy- methamphetamine #3 – Marijuana	#1 & #3 <u>Weights entered on 2/3/10 @ 10:36 A</u> <u>Preliminary Results</u> Tests for #1 & #3 entered after preliminary results issued #2 - GCMS & Retention Time - green (1/31/10, 11:42A) GCMS & Retention Time - purple (1/31/10, 12:22P) <u>Complete Analysis</u> #1 & #3 - Microscopic examination & Duquenois (02/03/10)

Austin P.D. Case Review

Case #	Case Received	Preliminary Report Date	Full Lab Report Date	Substance Identified	Analysis Documentation
					#2 – In addition to preliminary testing - UV Acid (2/1/10 @ 2:42), Marquis (2/3/10), SNP
L-1002829	3/13/10	3/13/10 CK – email 14:48	Final 3/22/10	#4 – Dimethyltryptamine #5 - Methylenedioxymetamphetamine	<u>Weights entered on 3/18/10 @ 12:50 P & 3/19/10 @ 8:53 A</u> <u>Preliminary Results</u> #4 – GCMS (3/13/10, 13:25) #5 – GCMS (3/13/10, 14:23) FTIR (3/13/10, 14:25) <u>Complete Analysis</u> #4 Marquis (3/18/10, 12:48) SNP (3/18/10, 12:50) UV Acid (3/16/10, 15:37) FTIR (3/16/10, 15:31 & 3/18/10, 14:08) GCMS (3/17/10, 22:36 & 3/18/10, 15:17) #5 Marquis (3/19/10, 8:53 AM) SNP GCMS re-run & Retention Time (3/18/10, 00:36) UV Acid (3/16/10, 8:53)

Austin P.D. Case Review

Case #	Case Received	Preliminary Report Date	Full Lab Report Date	Substance Identified	Analysis Documentation
L-1004326	4/17/10	4/18/10 CK – email 13:04	Final 4/27/10 Draft 4/27/10	Tetrahydrocannabinols	<u>Weight entered on 4/23/10</u> <u>Preliminary Results</u> Duquenois (4/18/10, 12:51) Microscopic (4/18/10, 12:51) GCMS (4/18/10, 12:53) <u>Complete Analysis</u> GCMS re-run and Retention Time (4/20 & 4/22/10)
L-1006319	5/29/10	5/30/10 CK – email 10:33	Final 6/9/10	#1.1 – Methylenedioxymet amphetamine #1.2 – Methylenedioxymet amphetamine	<u>Weight entered on 06/09/10 @ 14:27</u> <u>Preliminary Results</u> # 1.1 & 1.2 GCMS (5/29/10, 11:41 & 11:43) <u>Complete Analysis</u> # 1.1 & 1.2 GCMS (6/9/10) # 1.1 & 1.2 UV Acid (6/9/10)
L-1006342	5/30/10	5/30/10 CK – email 11:48	Final 6/9/10 Draft 6/9/10	Phencyclidine	<u>Weights entered on 5/30/10 @ 11:03</u> <u>Preliminary Results</u> 4 GCMS (5/30/10, 11:11; 11:25; 11:40 & 11:54) <u>Complete Analysis</u> GCMS [Phencyclidine] (6/3/10) Retention time – (6/9/10) FTIR – Phencyclidine (6/3/10)

Austin P.D. Case Review

Case #	Case Received	Preliminary Report Date	Full Lab Report Date	Substance Identified	Analysis Documentation
L-1006701	6/5/10	6/5/10 GH – email 17:00	Final 6/9/10	#1 – No Controlled Substance Detected #2 - Hydroxyzine	<u>Weights entered on 6/9/10 @ 10:12 am</u> <u>Preliminary Results</u> #1 – UV Acid & Base (6/5/10, 14:50) GCMS (6/5/10, 16:16) #2 – Rx only (6/5/10, 14:35) <u>Complete Analysis</u> #1 - Additional testing entered 6/9/10 Marquis - Neg CoSCN - Neg #2 – No additional testing
L-1008571	7/13/10	7/13/10 GH – email 16:45	Final 9/15/10	Dimethyltryptamine	<u>Weight entered on 7/21/10 @ 12:36</u> <u>Preliminary Results</u> #1-4 – GCMS (7/13/10, 15:41-16:21) <u>Complete Analysis</u> UV Acid (7/19/10, 13:21) Retention Time (7/14/10, 14:39)
L-1008745	7/18/10	7/18/10 GH – email 11:45	Final 7/20/10 Draft 7/19/10	Alprazolam	<u>Weight entered on 7/19/10 @ 10:42</u> <u>Preliminary Results</u> GCMS & Retention Time (7/18/10, 11:41) <u>Complete Analysis</u> UV Acid (7/19/10, 9:59) Pharmaceutical [Partial Alprazolam] (no date)

Austin P.D. Case Review

Case #	Case Received	Preliminary Report Date	Full Lab Report Date	Substance Identified	Analysis Documentation
L-1008746	7/18/10	7/18/10 GH – email 11:45	Final 7/20/10 Draft 7/19/10	Hydroxyzine	<u>Weight entered on 7/19/10 @ 17:15</u> <u>Preliminary Results</u> GCMS (7/18/10, 10:48) <u>Complete Analysis</u> UV Acid (7/19/10, 11:39) GCMS [Hydroxyzine] (7/19/10, 16:34) <u>Weights entered 10/3/10 @ 11:28</u>
L-1012349	10/3/10	NONE ISSUED	Final 10/3/10 Draft 10/3/10	#1 – Heroin (trace) #3 - Amphetamine	<u>Complete Analysis</u> #1 - Marquis [purple] (10/3/10, 11:28) GCMS & Retention Time [Heroin] (10/3/10, 10:33) #3 – Marquis [orange] (10/3/10, 11:28) UV Acid (10/3/10, 10:35) GCMS [Amphetamine] (10/3/10, 10:54) Pharmaceutical [Amphetamine] (10/3/10)

EXHIBIT H

APD Retest Comparison Chart

Lab #	LIMS Item Number	Client ID Number	Substance Analyzed	APD Reported Sample	APD After Analysis Weight in grams	NMS Controlled Substance Examination Performed	NMS Result
L0900062	5.1	2009-21587	Alprazolam (5 tablets)	1.30 g	1.03	GC/MS and Pharmaceutical Identification	Confirmed as containing Alprazolam
	6	2009-21587	Cocaine	.03g	0.02	Microchemical Color Examination and GC/MS	Confirmed as containing Cocaine
L0900078	1.1	2009-22707	3,4-Methylenedioxymethamphetamine	.26g	0.17	GC/MS and GC/Flame Ionization Detection	Confirmed as containing 3,4-Methylenedioxymethamphetamine (MDMA) and 3,4-Methylenedioxyamphetamine (MDA)
L0905372	2.1.1	2009-1082305	Codeine (purple syrup)	44.74	38.88	GC/MS and GC/Flame Ionization Detection	Confirmed as containing Promethazine and Codeine
	2.2.1	2009-1082305	Codeine (red liquid - soda)	301.77	291.3	GC/MS and GC/Flame Ionization Detection	Confirmed as containing Promethazine and Codeine
	2.3.1	2009-1082305	Codeine (pink liquid - soda)	796.68	775.4	GC/MS and GC/Flame Ionization Detection	Confirmed as containing Promethazine and Codeine
L0908887	1	2009-1782011	Dihydrocodeinone (liquid)	7.07g	3.24	GC/MS and GC/Flame Ionization Detection	Confirmed as containing Hydrocodone
L0915854	1	2009-3242070	Phencyclidine (in volatile liquid) check to see if still liquid	.42g	0.37	Comparative Thin Layer Chromatography and GC/MS	Confirmed as containing Phencyclidine (PCP)
L1001183	1.1	2010-301866	Cocaine	13.65	13.2	Microchemical Color Examination, GC/MS	Confirmed as containing Cocaine
	2.1	2010-301866	Cocaine	27.61	27.17	Microchemical Color Examination, GC/MS	Confirmed as containing Cocaine
	3.1	2010-301866	Cocaine	27.58	27.35	Microchemical Color Examination, GC/MS	Confirmed as containing Cocaine
	4.1	2010-301866	Cocaine	27.75	27.66	Microchemical Color Examination, GC/MS	Confirmed as containing Cocaine
	5.1	2010-301866	Cocaine	27.67	27.58	Microchemical Color Examination, GC/MS	Confirmed as containing Cocaine
	6.1	2010-301866	Cocaine	13.89	13.56	Microchemical Color Examination, GC/MS	Confirmed as containing Cocaine
	7.1	2010-301866	Cocaine	27.79	27.57	Microchemical Color Examination, GC/MS	Confirmed as containing Cocaine
	8.1	2010-301866	Cocaine	27.68	27.28	Microchemical Color Examination, GC/MS	Confirmed as containing Cocaine
	9.1	2010-301866	Cocaine	13.8	13.51	Microchemical Color Examination, GC/MS	Confirmed as containing Cocaine
	10.1		Cocaine	27.63	27.38	Microchemical Color Examination, GC/MS	Confirmed as containing Cocaine
	11.1		Codeine and Promethazine (liquid)	114.54	106.21	Comparative Thin Layer Chromatography, GC/MS, and GC/Flame Ionization Detection	Confirmed as containing Promethazine and Codeine

Lab #	LIMS Item Number	Client ID Number	Substance Analyzed	APD Reported Sample	APD After Analysis Weight in grams	NMS Controlled Substance Examination Performed	NMS Result
L1002829	4	2010-720452	Dimetehyltryptamine	.29g	0.19	Microchemical Color Examination, Comparative Thin Layer Chromatography, and GC/MS	Confirmed as containing Dimethyltryptamine (DMT)
	5.1	2010-720452	3,4-Methylenedioxymethamphetamine (5 capsules)	.37g	0.3	Microchemical Color Examination, GC/MS and GC/Flame Ionization Detection	Confirmed as containing 3,4-Methylenedioxymethamphetamine (MDMA), 3,4-Methylenedioxyamphetamine (MDA) and Dimethyltryptamine (DMT)
L1006342	1	2010-1492152	Phencyclidine (in volatile liquid)	1.95g	0.98	Comparative Thin Layer Chromatography and GC/MS	Confirmed as containing Phencyclidine
L1008571	1		Dimethyltryptamine (Liquid)	2.28	2.28	Comparative Thin Layer Chromatography and GC/MS	Confirmed as containing N, N-Dimethyltryptamine
	2		Dimethyltryptamine (Liquid)	0.09	0.09	GC/MS, Comparative Thin Layer Chromatography	Confirmed as containing N, N-Dimethyltryptamine
	3		Dimethyltryptamine (Liquid)	0.91	0.91	Comparative Thin Layer Chromatography, GC/MS	Confirmed as containing N, N-Dimethyltryptamine
	4		Dimethyltryptamine (Liquid)	1.28	1.28	Comparative Thin Layer Chromatography, GC/MS	Confirmed as containing N, N-Dimethyltryptamine
	5		Dimethyltryptamine (Liquid)	0.3	0.3	Comparative Thin Layer Chromatography, GC/MS	Confirmed as containing N, N-Dimethyltryptamine
	6.1		Dimethyltryptamine (powder)	491.73	491.73	Microchemical Color Examination, Comparative Thin Layer Chromatography, and GC/MS	Confirmed as containing N, N-Dimethyltryptamine
L1012349	3.1	2010-2751905	Amphetamine (4 tablets)	.93g	0.69	GC/MS and Pharmaceutical Identification	Confirmed as containing Amphetamine
L1001185	2.1	2010-301586	3,4-Methylenedioxymethamphetamine (24 tablets)	7.24g	6.83	Microchemical Color Examination and GC/MS	Item 1 - Confirmed as containing 3,4-Methylenedioxymethamphetamine (MDMA); Item 2 - Confirmed as containing 3,4-methylenedioxymethamphetamine (MDMA)
L1006319	1.1.1	2010-1482493	3,4-Methylenedioxymethamphetamine (8.5 tablets)	2.07g	1.97	Microchemical Color Examination, GC/MS and GC/Flame Ionization Detection	Confirmed as containing 3,4-Methylenedioxymethamphetamine (MDMA) and 3,4-Methylenedioxyamphetamine (MDA)

Lab #	LIMS Item Number	Client ID Number	Substance Analyzed	APD Reported Sample	APD After Analysis Weight in grams	NMS Controlled Substance Examination Performed	NMS Result
	1.2.1	2010-1482493	3,4-Methylenedioxymethamphetamine (4 tablets)	.96g	0.87	Microchemical Color Examination, GC/MS and GC/Flame Ionization Detection	Confirmed as containing 3,4-Methylenedioxymethamphetamine (MDMA) and 3,4-Methylenedioxyamphetamine (MDA)

EXHIBIT I



**AMERICAN SOCIETY OF CRIME LABORATORY DIRECTORS
LABORATORY ACCREDITATION BOARD**

June 1, 2012

William Gibbens, Forensic Services Manager
Austin Police Department
Forensic Science Division
PO Box 689001
Austin, Texas 78768

Dear Manager Gibbens:

On February 6, 2012, you were advised that ASCLD/LAB had received two allegations against the Austin Police Department Forensic Science Division. On April 21, the ASCLD/LAB Board of Directors received a report from investigator Patti Williams concerning allegations received from Mr. Ron Fazio, Director of Integrated Forensics, Inc.

The report addressed three (3) allegations presented by Mr. Fazio. The first allegation is related to a discrepancy in the results of analysis reported by two different controlled substances analysts from the Austin Police Department Forensic Science Division and an analysis on the same item of evidence performed by Integrated Forensics, Inc. As detailed in the investigative report, the differences reported by the three analysts are explainable but were not appropriately explained or documented in a report by the Austin Police Department. The Board concluded that the laboratory's protocol supports not reporting the presence of cocaine following the second analysis. The Board also finds it problematic that no apparent effort was made to document or report the reason for the discrepancy.

The second allegation is related to the laboratory reporting "Tetrahydrocannabinols" on a sample which was reported as "Marihuana" by Integrated Forensics, Inc. The investigation revealed evidence that the analyst in the laboratory did not sufficiently document the observations made during the examination of the sample in question to allow another analyst to know what had been observed as required by ASCLD/LAB Legacy criterion 1.4.2.16. As pointed out by the investigator, the ASCLD/LAB Board agrees that there may be a need for legal clarification as to what constitutes Marihuana and/or Tetrahydrocannabinols by Texas law.

The Board concluded that the third allegation related to the laboratory's failure to follow the court's order is a matter for the court to deal with and does not fall under the purview of ASCLD/LAB.

A copy of the investigative report is being provided to you with this communication. Because ASCLD/LAB is continuing to investigate allegations against the Austin Police Department by a former employee, the Board opted to not take any actions pending the conclusion of that investigation.

If you have any questions concerning this matter, please feel free to contact me.

Sincerely,

Ralph M. Keaton
Ralph Keaton
Executive Director

cc: ASCLD/LAB Board
ASCLD/LAB Accreditation Program Managers

Austin Police Department Forensic Science Division, Legacy Certification #324

Investigative Report of Complaint

Complaint: filed by Director Ron Fazio, Integrated Forensic Laboratories, Legacy Certification #366

Date: May 1, 2012

Prepared by Assigned Investigator: Proficiency Program Manager Patti Williams

NATURE of the ALLEGATIONS

The complainant, Director Ron Fazio, Integrated Forensic Laboratories, Inc. (IFL), submitted an email communication dated January 17, 2012 to Ralph Keaton, ASCLD/LAB, alleging that the laboratory results of Austin Police Department Forensic Science Division (APD) were at odds with the results of his laboratory. In addition, Director Fazio alleged that APD was not in conformance with a specific APD evidence handling policy. Dir. Fazio came to make this complaint based upon his and his laboratory's review of forensic drug case data produced by the Austin Police Department in three unrelated cases.

The complainant did not cite specific ASCLD/LAB standards alleged to have been violated. He alleged that Austin PD did not investigate or take necessary actions when faced with analytical and administrative concerns.

Summary- Director Fazio states that IFL receives very little defense casework from APD (4 to 6 cases over the last couple of years). Within a short period of time, IFL was asked to re-analyze three drug cases previously worked by APD. APD case records, as well as the evidence, were released to IFL for review/testing. Concern appeared due to the irregularities (as recognized by IFL) in the last three cases of three cases that were previously analyzed by APD.

The investigator is recommending one non-conformance finding under the ASCLD/LAB Legacy 2008 accreditation program, given the results of the review below.

STATEMENT OF THE ALLEGATIONS

The complainant outlined numerous topic areas of allegations, which will be addressed separately below. There have been two additional email communications and one phone call with the complainant to clarify various elements of the provided documentation and the scope of this investigation.

SCOPE OF THE REVIEW

The review of this matter included a review of documentation provided by IFL and APD's response to the complaint dated February 15, 2012. There were three phone calls and several email exchanges with APD Director Gibbens and Quality Manager Tony Arnold to obtain additional documentation or clarification on existing documentation. The review focused on the complainant's concerns involving three specific cases:

1. Cocaine Case: IFL 1108165/APD L10-12068
2. THC Case: IFL 1111143/APD L10-13202
3. MDMA Case: IFL XXXXXX/APD L09-12695

LIST OF DOCUMENTATION AND INFORMATION REVIEWED

1. Email (letter) from complainant outlining allegations
2. Case File records provided by complainant (includes records from both IFL and APD)
3. Email (response) from APD concerning the allegations
4. Case File records* provided by APD
5. Various standard operating procedures provided by APD
*Case file records included not only examination records but also administrative documentation that could include case reports, case-related communications, legal documents, supporting literature references
6. Email communications from both IFL and APD
7. Interview/telephone conversation information
8. Input from the Controlled Substances Technical Advisory Committee (TAC)

SUMMARY OF INVESTIGATION OF COMPLAINT ALLEGATIONS

Complaint 1 - Cocaine Case: IFL 1108165/APD L10-12068

The complainant alleges that the APD results are inconsistent with previous results reported by the laboratory and inconsistent with results reported by IFL. The complainant also alleges that APD was negligent in not conducting an investigation when a significant difference in evidence weight was noted.

On 10/7/2010, APD Analyst 1 generated a report on Item 1 (described as off-white rocks) with the result being Cocaine, 15.24 grams net. The examination records offer a more detailed description of the evidence: *"clear plastic bag containing off white rock-like substance {approx. 54 rocks} (moist)"*. The evidence was stored in the Austin Police Department Property Room (not under the control of the laboratory) from 11/30/2010 until 8/9/2011. This Property Room is housed within a larger building and the temperature is maintained at the general building temperatures. There were no known or documented power outages and/or extreme temperature fluctuations during the time this evidence was stored in the Property Room.

On 8/9/2011, when the evidence was pulled in preparation for a viewing by the defense team, a change in the appearance of the evidence prompted a request for Analyst 1 to respond to the Property Room. Analyst 1 noted that the evidence, previously described as "off-white rocks" was now a "brown liquid". Analyst 1 emails the Assistant District Attorney (ADA), copying the Drug Section Supervisor on the email, and relays information regarding the change in the appearance of the evidence. The email also states *"(Supervisor) is open to having another analyst re-analyze the liquid in the bag and determine if cocaine is still present"*. The ADA agrees to the re-testing and the Supervisor's response email informs the ADA that Analyst 2 will be assigned the case. Analyst 2 was not copied on this email exchange.

On 8/17/2011, APD Analyst 2 generated a report on Item 1 (described as brown liquid) with the result being Benzoylcognine, 8.65 grams net (42% less than what was previously reported). The examination records offer a more detailed description of the evidence: *"Brown liquid sludge. Contained inside a ziplock bag labeled 'L1012068-1' and 'CK 6524'. Contained inside a larger ziplock along with a plastic baggie with brown residue (not analyzed)"*. The examination records of Analyst 2 clearly document the presence of both Benzoylcognine and Cocaine, although only Benzoylcognine was reported.

In order to report a drug (non-marijuana), APD procedure requires the following: one category A (GC/MS, FTIR) **AND** one other technique from category A or a combination of two techniques from categories B (GC-retention time) or C (color tests, UV/VIS, UV/Vis quantitation). Analyst 2 had GC/MS results but no other techniques that would enable Cocaine to be reported in compliance with laboratory protocol.

During this investigation, Analyst 2 communicated to APD Director Gibbens that he did not familiarize himself with the previous analysis and worked the evidence as if it was a newly submitted case. The Supervisor confirmed, to Director Gibbens, that Analyst 2 had not been given any specific instructions when assigned this case for analysis.

APD, acting on a court order, released the evidence to IFL for testing. On 9/12/2011, IFL generated a report on Item 1-A (described as brown material) with the result being Cocaine, 4.90 grams and Item 1-B (described as brown residue) with the result being Cocaine.

The first concern of the complainant is associated with the non-reporting of Cocaine by APD when the sample was reported as Cocaine in previous and subsequent analyses.

In his examination records, APD Analyst 1 identified the sample as cocaine base and described the off-white rock as "moist". Benzoylecognine results from the hydrolysis of cocaine. Reference literature and TAC input support that cocaine base will break-down to Benzoylecognine and the existing moistness may have accelerated the breakdown. Although Analyst 2 reported Benzoylecognine, he clearly documented the presence of Cocaine in his examination records. Analyst 2 was not tasked with a special request such as "confirm the presence of cocaine" and his testing proceeded with the analytical scheme used for normal casework.

The second concern of the complainant is associated with the lack of an investigation by APD when a substantial decrease in evidence weight had occurred.

Reference literature and TAC input support that the breakdown of cocaine into benzoylecognine will result in weight loss. TAC members were not surprised with the diminished weight reported by APD and were familiar with this amount of weight loss occurring. APD stated that when evidence seals or packaging is compromised, the employee will correct the problem and document the actions. There is no indication that the packaging or seals were compromised in this case. There is no indication that other evidence was potentially contaminated from this evidence while in storage.

Table 1 on the next page presents a comparative view of the testing conducted by the three analysts.

TABLE 1	APD Examiner 1	APD Examiner 2	IFL Examiner
Report Date and Title	10/07/2010 Initial Report	8/17/2011 Initial Report	9/19/2011
Report Description	Off-white rock substance	Brown Liquid	1-A Brown Material 1-B knotted plastic bag containing brown residue
Reported Weight	15.24 g net	8.65 g net	1-A 4.90 grams 1-A Residue
Substance Reported	COCAINE (controlled)	BENZOYLECOGNINE (not controlled in TX)	1-A COCAINE 1-B COCAINE
Weights recorded in examination records	Gross weight Before Analysis: 15.24 g Net weight Before Analysis: 15.24 g Net weight After Analysis: 14.87 g	Gross weight Before Analysis: 9.73 g Net weight Before Analysis: 8.65 g Net weight After Analysis: 7.17 g	4.90 g
Description in examination records	clear plastic bag containing off white rock-like substance (approx. 54 rocks) (moist) <i>Add. Info- Response:</i> <i>The evidence was originally submitted as an outer ziplock containing a sandwich bag with suspected cocaine rocks. The original analyst states that the suspected cocaine was removed from the sandwich bag and stored in a lab supplied ziplock. The sandwich bag was stored in a second lab supplied ziplock.</i>	Brown liquid sludge. Contained inside a <u>ziplock bag labeled "L1012068-1" and CK 6524"</u> . Contained inside a larger ziplock along with a plastic baggie with brown residue (not analyzed).	bubble wrap c/tape sealed plastic envelope c/ two pb c/ 1A – brown material" and 1B – knotted pb c/brown residue
Non-reported drugs mentioned in examination records	None mentioned	Cocaine	1-A and 1-B: Benzoyllecognine and anhydroecognine
Lab Reqs. on reporting Drugs (does not include marijuana)	One category A (GC/MS, FTIR) <u>AND</u> one other technique from category A or a combination of two techniques from categories B (GC-retention time) or C (color tests, UV/VIS, UV/Vis quantitation)	Same as in column to the left	

Recommendations – Complaint 1:

There is insufficient evidence to support the allegations that APD was negligent in its analysis, storage, or reporting of this evidence. The nature of the evidence sample (breakdown of moist Cocaine) and differences in techniques and reporting requirements led to the difference in reported results. There is also insufficient evidence to support the allegations that APD was negligent in lacking a documented investigation into whether or not the weight loss of this evidence impacted other evidence stored near-by.

Complaint 2 - THC Case: IFL 1111143/APD L10-13202

The complainant alleges that evidence may not have been properly examined at APD. The concern is based on APD reported results being inconsistent with results reported by IFL.

On 10/29/2010, APD Analyst 3 generated a report on the above case documenting that Item 1 (described as brown substance) had a result of Tetrahydrocannabinols, 9.75 grams net. Item 1 was part of a 12 item case with several pounds of Marihuana being reported as well as other drugs. The examination records of Analyst 3 describe Item 1 as *"1 cookie and 1 small chunk"*. The input fields for both Macroscopic Exam and Microscopic Exam have *"Not consistent with marihuana"* as the documented observation. The reporting of Tetrahydrocannabinols was supported by a GC/MS of Tetrahydrocannabinol and retention time comparison. No photographs were taken during this analysis.

On 7/29/2011, the DA's office emails Analyst 3 and asks how she arrived at a conclusion of Tetrahydrocannabinols and not "marihuana". The response was *"We do an exam of the substance using the microscope and I was unable to detect unique characteristics on plant material"*.

APD, acting on a court order, released the evidence (now identified as Item 23) to IFL for testing. On 12/14/2011, IFL generated a report on Item 23 (described as brown rock-like material) with the result being Marihuana, 1.14 grams. Examination records document that a microscopic examination was performed after GC/MS analysis. The documented observations communicate the presence of characteristic Marihuana hairs: glandular hairs and cystolithic hairs. Photographs were taken.

On 2/9/2012, after receiving awareness of this complaint, the APD Supervisor re-examined the sample (Item 1) and documented *"Lacks sufficient observable macroscopic botanical detail"* in the input field for Macroscopic Exam and *"Not consistent with marihuana"* in the field for Microscopic Exam. The examination records offer a more detailed description of the evidence to include *"...no visible green plant material visible to naked eye..., sample is predominantly resinous material, cystolithic hairs, and other fibrous material...Cystoliths and trichomes are larger than the green particles present"*. Photographs were taken. In a Memorandum dated 2/10/2012, the APD Supervisor documents this conclusion: *"These fragments are too small to be able to called consist with marihuana leaf structure. The initial analyst followed our procedure manual protocol in concluding the substance as Tetrahydrocannabinols."*

The APD procedures allow for the recording of a positive macroscopic and/or microscopic examination as "consistent with marihuana". Likewise, the procedures allow for negative observations to be recorded as "not consistent with marihuana".

The procedures manual has sections on the microscopic examination of 1) plant material and 2) non-leafy plant material such as hashish, charred residue, oil extracts, or residue. The APD procedure, in the section for microscopic examination of the plant material states *“A positive microscopic examination is the observation of the presence of an appropriate number of cystolithic hairs or characteristic seeds”*.

The section on the microscopic examination of non-leafy plant material states that these items may exhibit some or all of the microscopic characteristics of marihuana in the residue. Four steps are listed:

1. *Observe the solubility of resinous material*
2. *Note if any plant material (particles) is present such as cystolithic hairs or green plant fragments.*
3. *Extract a sample with hexane or CHCl_3*
4. *Place a portion on a microscope slide ...and microscopically examine for characteristics of marihuana, including cystolithic and glandular hairs*

Another section in the procedure manual titled “Hash (Hashish)” states that *“usually only cystolithic hair are observed, if at all”* and then specifies the following two steps:

1. *Dissolve small amount on glass plate or slide*
2. *Observe for cystolithic hair, conical trichomes or filamentous hairs.*

The original analyst, Analyst 3, recorded a microscopic examination result of *“not consistent with marihuana”* and did not mention the presence of cystolithic or other characteristic hairs seen by the other two examiners. There was no indication that the following required steps were conducted: solubility observation, extraction with CHCl_3 or Hexane, and microscopic examination on a glass plate or slide.

APD procedures do specify that hashish is to be reported as “Tetrahydrocannabinols” however the words ‘hash’ or ‘hashish’ are not used in the examination records of the case. The procedures, at the time of the original analysis, did not clearly specify the minimum requirements needed to report “Tetrahydrocannabinols” instead of “Marihuana”. A new version of the procedures manual, dated after the original analysis, states that “THC” is to be reported when the macroscopic/microscopic identification cannot be confirmed and the following tests are conducted: (1) Category A (GC/MS) and (1) Category C (Duquenois-Levine). This new version did not expand on language associated with macroscopic/microscopic examinations.

Input from the TAC confirms that Marijuana and THC can have different schedule/control levels and that analysis is becoming more difficult with having to distinguish between synthetic THC and plant (natural) THC. With THC having a higher penalty, the TAC consensus was caution is taken and the three responses, slightly different from one another, are summarized below:

TAC Response 1: “...So unless I see a recognizable pharmaceutical preparation (e.g., Marinol) or labeled vial containing THC only (e.g., a pure reference standard), I will be cautious and report marijuana. In cases in which there is ANY botanical characteristic present – cystolithic hairs, glandular hairs, covering hairs, seed, seed bract, stem, stalk – I think it should be reported as marijuana.”

TAC Response 2: "In order to call Marijuana, we would expect to see certain features of plant material leaves along with glandular and cystolithic hairs. ...If you have plant material non-specific leaf number and design, with no hairs and only see THC on mass spec. Report THC, but clarify don't know whether source was of natural (plant) or synthetic origin."

TAC Response 3: "I think reporting THC should be reserved for samples lacking the identifiable characteristics to be reported as marijuana, or other resinous extract from marijuana, as long as THC is identified by GC/MS."

Table 2 presents a comparative view of the testing conducted by the three analysts.

TABLE 2	APD Examiner 3	IFL Examiner	APD Supervisor
Report Date	10/12/2010 Initial Report	12/14/2011	2/10/2012 (Memo)
Report Description	(1) Brown substance	(23) Brown rock-like material	(1) Hard brown compressed substance
Reported Weight	9.75 g net	1.14 grams	8.48 g net
Substance Reported	Tetrahydrocannabinols	Marihuana(not controlled or scheduled in TX)	No report, internal memo, supported the conclusion of Tetrahydrocannabinols reported by Analyst 3.
Weights recorded in examination records	Gross weight Before Analysis: 9.75 g Net weight Before Analysis: 9.75 g Net weight After Analysis: 9.73 g	1.14 g	Gross weight Before Analysis: 8.48 g Net weight Before Analysis: 8.48 g Net weight After Analysis: 8.45 g
Description in examination records	1 cookie and 1 small chunk	1 spb c/ pb c/ brown rock-like material	<i>...no visible green plant material visible to naked eye..., Under maximum magnification, minute green particles were found. These green particles were less than the width of the...These fragments are too small to be able to be called consist with marihuana leaf structure. Sample is predominantly resinous material, cystolithic hairs, and other fibrous material...Cystoliths and trichomes are larger than the green particles present.</i>
Macroscopic Exam (Worksheet)	Not consistent with marihuana		Lacks sufficient observable macroscopic botanical detail
Microscopic Exam (Worksheet)	Not consistent with marihuana Solubility testing conducted? What solvent used (CHCl₃ or Hexane)? Slide preparation? Noted presence of cystolithic hairs?		Not consistent with marihuana

Lab Reqs. on reporting Marihuana and THC	Marihuana: (1) Category B (Macroscopic/Microscopic Examination) and (1) Category C (Duquenois-Levine). Procedures, at the time of analysis, did not specify the minimum requirements needed to report "Tetrahydrocannabinols" instead of "Marihuana".		See 1 st column as well as information below: A new procedure dated after the original analysis states that "THC" is to be reported when the macroscopic/microscopic identification cannot be confirmed and the following tests are conducted: (1) Category A (GC/MS) and (1) Category C (Duquenois-Levine). This new procedures version did not expand on language associated with macroscopic/microscopic examinations.
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Recommendations – Complaint 2:

The concern of the complainant is associated with APD's reporting of Tetrahydrocannabinols in an item where IFL subsequently reported Marihuana. Per the complainant, Tetrahydrocannabinols carries a stiffer penalty than Marihuana.

The APD procedure mentions examination of both leafy plant material and non-leafy plant material. This particular evidence item contained hairs characteristically found in Marihuana; however the typical recognizable leafy substrate was absent. Per APD interview, hashish is not defined in Texas Law and the presence or absence of sufficient botanical detail is a deciding factor on how the item is to be reported. With regards to whether or not the evidence should be reported as Marihuana or Tetrahydrocannabinols, the decision does not fall within the purview of ASCLD/LAB. It appears to be a decision best made, in order to have a consistent approach to reporting, by the state's forensic experts with input from the legal community.

Various Legacy accreditation requirements were related to the scope of this complaint including 1.4.2.16.

1.4.2.16 ARE CONCLUSIONS AND OPINIONS IN REPORTS SUPPORTED BY DATA AVAILABLE IN THE CASE RECORD, AND ARE THE EXAMINATION DOCUMENTS SUFFICIENTLY DETAILED SUCH THAT, IN THE ABSENCE OF THE EXAMINER(S), ANOTHER COMPETENT EXAMINER OR SUPERVISOR COULD EVALUATE WHAT WAS DONE AND INTERPRET THE DATA?

The examination records of Analyst 3 do not document the presence of characteristic plant hairs (cystolithic hairs), as seen and documented by both IFL and the APD Supervisor, and as required to be observed by laboratory protocol. It is not possible to determine if cystolithic or other characteristic hairs were visualized and whether or not the examination included the laboratory required solubility testing and slide preparation. It is also not possible to determine which solvent (Hexane and CHCl₃ are the two options) was used during the microscopic examination.

Analysts are recording a microscopic examination result of "not consistent with marihuana" when cystolithic hairs are present. A recording of "*Not consistent with marihuana*" as the result of a microscopic examination does not convey that characteristic plant hairs were present and most likely conveys such hairs were not present.

It is the opinion of this investigator that the procedure is not sufficient in specifying the minimum acceptability criteria for recording “consistent with marihuana” and “not consistent with marihuana” as a result for macroscopic and microscopic examinations in the examination records. It is also the opinion of this investigator that the examination records created by Analyst 3 are not sufficiently detailed to evaluate what was done and what was observed. Non-conformity with Legacy Requirement 1.4.2.16

Complaint 3 - MDMA Case: IFL XXXXXX/APD L09-12695

The complainant alleges that evidence may not have been properly released, as per court order, and that APD was not in conformance with its own procedures on releasing evidence.

On 9/28/2009, APD Analyst 4 generated a report on the above case documenting that Item 2.4 (described as 1 green round pill with heart imprint) had a result of 3,4-methylenedioxymethamphetamine, 2.35 grams. Item 2.4 was part of a several item case with Cocaine, Marijuana, Methamphetamine and additional tablets with 3, 4-methylenedioxymethamphetamine being reported. On 6/13/2011, a corrected report was issued changing the report description of Item 2.4 to “8 yellow round pills with imprint of heart with arrow”.

IFL received a court-ordered request to reweigh the tablets previously analyzed by APD. On 7/8/2011, APD sent the tablet evidence to IFL and IFL recognized that not all the tablets were present. Per APD, on 7/26/2011, IFL contacted APD and requested the remaining evidence and was advised of APD’s policy at that time. The policy, titled .4 Release of Evidence by Court Order, states:

.01 ..., .02..., .03...

.04 A sufficient amount of drug substance for analysis shall be weighed and placed in a suitable container for release. Sufficient sample for a third party independent analysis is retained. If only a trace of sample remains, release will only be authorized by the section supervisor or designee.

.05..., .06..., .07... and is followed by:

.5 The section supervisor, or designee, must approve any release of evidence that does not meet the guidelines listed in section 4.

The Court Order, in this case, states in part: *The Travis Co. D.A. shall allow the inspection of all controlled substances that the prosecutor’s office intends to introduce into evidence in this case. ...*

For purposes of testing and making a quantitative and qualitative analysis for the percent composition and total weight of actual substance, the Travis Co. D.A.’s Office through its agents ...delivery to IFL of:

- *The alleged controlled substances...*

APD retained ½ of each item being sent to IFL. The below table depicts the original tablet numbers (Items 2.1 – 2.5) and the tablet numbers being released to IFL (samples of 2.1-2.5 now itemized as 4.1-4.5).

ITEM NO	DESCRIPTION
2.1	¼ blue pill
4.1	¼ blue pill
2.2	¼ green pill
4.2	¼ green pill
2.3	¼ green pill
4.3	¼ green pill
2.4 ***	8 whole yellow pills *** corrected report issued 21 mo after 1 st
4.4	8 halves of the yellow pills
2.5	2 whole yellow pills & 1 half pill
4.5	2 halves and ¼ of the yellow pills

IFL, being unfamiliar with such a policy, relayed the information to their legal contact in the case. IFL, with awareness of APD's policy, questioned the lab's conformance with this policy on the previous cases that IFL had received from APD.

The Court Order in the previously discussed case in Complaint 2 (THC Case: IFL 1111143/APD L10-13202) states: *It is hereby order and adjudged that: ...*

2) The APD shall take all necessary actions to provide and transport accurate sample in its entirety of the exhibit, accurately labeled to identify which exhibit/tag number applies to the sample, to said lab in such condition that they may be accurately chemically, microscopically, quantitatively and qualitatively tested by them...

A records review provided objective evidence that APD did comply with its policy and released only a portion of the sample (identified as Item 23) to IFL for analysis.

ITEM NO	DESCRIPTION
1	9.75 grams net
23	1.15 grams net

The Court Order in the previously discussed case in Complaint 1 (Cocaine Case: IFL 1108165/APD L10-12068) states:

It is therefore ordered that IFL is hereby authorized to be given

8) The actual exhibit examined at Austin PD Crime Laboratory under Lab N L1012068, including all packaging...

A records review provided objective evidence that APD released the entire evidence sample to IFL for analysis. APD's policy allows for this but there was no documentation of the required supervisor approval. APD communicated that the degradation of the sample supported the release of the entire evidence sample to IFL.

Recommendations – Complaint 3:

There is insufficient evidence to support the allegations that APD did not comply with its policy on “Release of Evidence by Court Order”. Although the supervisor’s documented approval of releasing the entire evidence sample was not present, the supervisor had been involved in case communications involving the evidence and the laboratory policy allows for this type of departure from policy.

There is a concern that APD’s policy appears to be at conflict with the intent of the Court Order. The laboratory is encouraged to seek input from the legal community as this subject matter does not fall within the purview ASCLD/LAB.

EXHIBIT J

Austin Police Department Forensic Science Division, Legacy Certification #324

Investigative Report of Complaint

Complaint: filed by Deborah Stephens (former employee)

Date: July 19, 2012

Prepared by Assigned Investigator: Proficiency Program Manager Patti Williams *Patti Williams*

NATURE of the ALLEGATIONS

On August 2, 2011, Executive Director Ralph Keaton received an email from Complainant Debra Stephens containing a 46 page attachment dated July 28, 2011. The complainant alleges that Austin Police Department Crime Laboratory Science Division (APD) violated policy that resulted in results being released in error, false filing of charges by the detectives and the prosecutors, and subsequent incarceration of innocent individuals. The complainant also expressed concern that the results were not supported by data and that the policies regarding preliminary reports were confusing and conflicting. This complaint contained:

1. copies of case records associated with three cases: L0807444, L1006319, L1001183
2. a one page sheet titled "Cases in Which Preliminary Results Were Released Before Administrative Review" with a listing of 25 cases with Incident number and LIMS Case Number
3. a one page table titled "Cases in which preliminary results were released before administrative review" which communicates 23 cases and dates of results and reports being released.
 - o The following two cases are listed in Item 2 (List) but do not appear in Item 3 (Table)
 - L0901797 and L0904944
 - o Case L0807444 listed in Item 1 (case records) was not present on Item 2 and Item 3.

On March 9, 2012, Executive Director Ralph Keaton received a second email from Complainant Debra Stephens communicating additional allegations of policy violations associated with:

- laboratory security,
- proficiency testing, and
- inaccurate reporting.

The complainant's concern was that, in the three situations mentioned above, no corrective actions and/or documentation of policy violation occurred. In both communications, the complainant did not cite specific ASCLD/LAB standards alleged to have been violated. She alleged that APD did not investigate or take necessary actions when faced with analytical and administrative concerns.

SCOPE OF THE REVIEW

The review of this matter included a review of documentation provided by Ms. Stephens and APD's response to the complaint, additional communications with both the complainant and APD, as well as additional documentation provided to ASCLD/LAB. On January 5, 2012, per Director Gibbens, Ms. Stephens filed a complaint with the Travis County District Attorney's Office regarding unqualified laboratory management and reports being released prior to the analysis being conducted. Travis County District Attorney's Office requested that Texas DPS investigate the validity of these allegations. Ralph Keaton, ASCLD/LAB Executive Director, was provided documentation created by D. Pat Johnson, Deputy Assistant Director, Texas DPS which included records of his investigation on this complaint as well as copies of his reports to Buddy Meyer, Travis Co. Asst. District Attorney. The investigation records also included the associated case file records and APD documented procedures. The following TX DPS Reports, authored by Pat Johnson, were reviewed:

- a. January 6, 2012,
- b. January 11, 2012,
- c. January 30, 2012

Communications dated February 7 and February 23 between Laboratory Director Bill Gibbens and Texas Forensic Science Commission -Legal Counsel Lynn Robitaille were also reviewed.

During this investigation, emails and phone calls occurred with the APD Laboratory Director Bill Gibbens and Quality Manager Tony Arnold. Communications with the complainant Debra Stephens also occurred.

An onsite visit took place at APD on June 7 and 8, 2012. Lynn Robitaille and Richard Alpert, representatives of the Texas Forensic Science Commission, were also present during the onsite visit. The following employees were contacted during the visit: Lab Director Bill Gibbens, Quality Manager Tony Arnold, Supervisor Gloria Rodriguez, and five analysts: Glen Harbison, Ralph Salazar, Chris Kiyak, Quynh Nguyen, and Katherine Sanchez. Analysts Harbison and Kiyak had worked the cases on the lists provided by Ms. Stephens.

For the purpose of this report, this investigation has categorized the complainant's concerns into these four areas:

- **Complaint 1 – preliminary results released in multiple cases**
- **Complaint 2A – laboratory security,**
- **Complaint 2B - proficiency testing**
- **Complaint 2C – inaccurate reporting**

SUMMARY OF INVESTIGATION OF COMPLAINT ALLEGATIONS

- **Complaint 1 – preliminary results released in multiple cases**

The complainant alleges that APD policies on preliminary results were confusing and that preliminary results were not supported by data. A side concern was that technical reviews were being conducted in an inconsistent manner (where reviews, refused by others, were approved by the Supervisor).

The purpose of the “preliminary results” was to communicate rush results during weekends when the information was needed to assist in filing charges. During the time frame of the concern (2008- 2010), no documented procedure on preliminary results existed with regards to the minimum data needed to release preliminary results, the mechanism of communication, or the retention of preliminary result records. When initially asked about procedures on preliminary results, the only procedure provided was the procedure on case file review which states: *All preliminary reports issued to detective for filing of charges may be administratively reviewed by the analyst and stated so in the preliminary report.*

A Preliminary Result template was made available to and used by the analysts to record the information. This one page “Preliminary Result” was present in the case record and documented the date, time, and method (phone, email, person) of the release of information. Some “Preliminary Result” forms contained email date/time stamps while others had only the date and approximate time as input by the analyst. The Preliminary Result communicates the weight and identity of the drug(s) tested.

See Three Examples in Appendix A

APD is a paperless system and each case record is accessed through the LIMS. The case record includes, if applicable, the Preliminary Result, matrix (drug section worksheet), instrumental data, draft and final reports, and documentation of all reviews. Evidence description, weights, color test results, instrumental techniques and outcomes, and conclusions are present on the matrix. In most instances reviewed, the final report was released just days after the preliminary result was communicated.

Interviews confirmed that analysts had no specific procedures governing the “preliminary report process”, but analysts were operating consistently:

- Preliminary Results could be released on identified rush cases.
- Rush cases during the week would be handled as normal “non-rush” cases if time allowed and multiple analysts available
- Analyst was allowed to administratively review their own Preliminary Results (typically on weekend rush casework when a single analyst was working). Analyst was required to document his own administrative review prior to the release of the Preliminary Results
- Understood practices:
 - Do the minimum amount of testing that allowed the analyst to feel comfortable with releasing the Preliminary Result. Laboratory has a documented procedure for the minimum required testing to report a conclusion in a Laboratory Report.

- No need to maintain the preliminary result instrumental data as one would be repeating the work when generating the final report. During the investigation by Mr. Johnson, Texas DPS, the laboratory was able to recover the majority of the instrumental data associated with preliminary results and save it to the case record.
- Weights and color test results were to be recorded in the LIMS as was done with typical casework. The initial recording of the weight may have directly on the Preliminary Result template. Most instrumental techniques were re-run to provide data supporting the conclusion in the final report. Note: Analysts have individual workstations with a balance and a computer with LIMS access.
 - Case record reviews, analyst interviews, and Mr. Johnson's reports determined that, during analysis for Preliminary Results, certain analysts may have recorded weights and color test results on external media before inputting the data into the LIMS. Days later, some or all of the information, was transcribed in the LIMS and the original media was destroyed. Audit trails of the LIMS provide objective evidence that the information was recorded into the LIMS on a later date than the date of the Preliminary Report.

See Appendix B for case record examples of these time lapses. Possible non-conformity - Legacy Requirement 1.4.2.14: *DOES THE LABORATORY CREATE AND MAINTAIN A UNIQUELY IDENTIFIED CASE RECORD FOR ALL EXAMINATION AND ADMINISTRATIVE DOCUMENTATION GENERATED AND/OR RECEIVED BY THE LABORATORY FOR EACH CASE INVOLVING THE ANALYSIS OF EVIDENCE?*

- Case file review revealed two instances where the total weight and identity of multiple items of evidence were communicated in the Preliminary Result when supporting analytical data was not present on all the items represented in the total weight. In one instance, the total weight of four items of evidence was documented in the preliminary report when analysis had been performed on only three of the four items. In this case, the preliminary result of the fourth item contained a time stamp that was prior to the GC elution time of the drug of interest. In the second case, preliminary instrumental data is present on two of three items and the laboratory states it was unable to recover data on the third item.

See Appendix C for case record examples. A possible non-conformity with Legacy Requirement 1.4.2.16 was considered however this requirement is specific to the Report and not a Preliminary Result. The subsequent Final Reports on both of these two cases are supported by data available in the case record.

APD believed that no other procedures related to preliminary results existed however; the investigation revealed the presence of a second laboratory procedure in "Chapter 50 Release of Division Records and Information" titled "Preliminary laboratory analysis information": This procedure states: *When an exigent circumstance exists, analysis information may be provided to the investigating agency prior to the completion of all analyses by the analyst and issuance of the final "Laboratory Report"*. In talking with the Quality Manager and Laboratory Director, this procedure is applicable to the Biology section. Interviews with Drug Chemistry staff

determined that everyone knows that the current practice is to only release results with a final report supported by completed examination records.

Summary - Complaint 1:

The complaint involved a "Preliminary Result process" that was in operation from January 2008 until October 2010 and involved 538 cases (information provided by the laboratory). The Preliminary Results on designated rush cases provided investigative information to the officers and courts. Final reports, supported by examination records, on the same evidence were generated at a later date. The final reports were generally released within days of the Preliminary Results. APD is a paperless laboratory and the LIMS houses the examination records (to include instrumental data) as well as the Preliminary Results and generated reports of the analysis.

Interviews determined that most Preliminary Results were released during non-business hours. During these times, the on-call analyst worked the rush cases, generated the Preliminary Result, documented his administrative review, and communicated these results by phone, email or by person. Although the email would have documentation of the release time, most often only the Preliminary Release form (and not the actual email) was retained.

Objective evidence determined that the majority of these Preliminary Results were generated by two analysts. Although the examination records appear intact and support the results being reported in the final report, a period of time exists between the time certain results were observed and the time when these results were recorded in the LIMS. Interviews determined that, at times, evidence weights and the results of non-instrumental tests such as color and/or microscopic examinations may have been recorded on external media. These results were then transcribed into the LIMS at a later date. The external media (or a suitable reproduction) containing these test results was not retained. This practice appeared to be associated with only one analyst and not the entire section.

Recommendations - Complaint 1

Based on the above information , it is the opinion of this investigator that a non-conformity may exist with Legacy Requirement 1.4.2.14: *DOES THE LABORATORY CREATE AND MAINTAIN A UNIQUELY IDENTIFIED CASE RECORD FOR ALL EXAMINATION AND ADMINISTRATIVE DOCUMENTATION GENERATED AND/OR RECEIVED BY THE LABORATORY FOR EACH CASE INVOLVING THE ANALYSIS OF EVIDENCE?* It should be noted that APD recognizes the information in the LIMS Matrix as the examiner worksheet and a matrix is present for each case record. When data was recorded on external media during the examination of evidence, this media or suitable reproduction was not retained. These tests were not repeated during the testing period that resulted in the final report.

There is no evidence to support the allegations that APD was negligent in conducting an administrative review on the preliminary results. By policy, administrative results could be conducted by the analyst. All preliminary results reviewed during this investigation had documentation of an administrative review.

Due to the lack of documented policies governing analysis in these designated rush cases, there is also insufficient evidence to support the allegations that APD policies on preliminary results were confusing.

Objective evidence, gathered through interviews, determined that analysts understood that preliminary results could be communicated once one was comfortable with the data.

One tangent allegation suggested that the documented Preliminary Result was not created until after the results were communicated to the external party. There is insufficient evidence to support this allegation. Case records contained documented Preliminary Results in a scanned file format. File properties of the Preliminary Result were associated with the date it was added to the LIMS as a scanned or image file and not the date the original Word file was created. File creation date was unable to be assessed by this case manager.

One additional concern addressed during this investigation was the allegation that the Supervisor approved the release of reports when other analysts, during the review process, had concerns that prevented their approval. There is insufficient evidence to support this allegation. Although technical reviews can be conducted by other analysts in the section, the Supervisor is tasked with the majority of the reviews. Unless mentioned elsewhere in this report, the case files reviewed determined that procedures were followed and data to support the conclusion in the final report was present.

Complaint 2 – Received March 9, 2012

(Components A, B, and C)

A. The complainant alleges that no actions were taken and/or documentation exists regarding a laboratory security policy violation.

The complainant describes an event in which she observed the Quality Manager using another employee's key card to gain access to the Controlled Substances section. Specific detail, such as the date of the alleged violation or name of the employee, is not provided. In response to this allegation, APD provided a "Record of Verbal Reprimand" dated November 1, 2010 detailing events that occurred on October 27, 2010. This record, signed and dated by both the Laboratory Director and Quality Manager, communicates that the Quality Manager had authorized key access to the area, however did not have a personal access card to the Controlled Substances section. Using someone else's access card is not permitted and resulted in the Quality Manager receiving a verbal reprimand. Additional action included updating the permissions of the Quality Manager's access card to include access into the Controlled Substances section.

The laboratory's security policy (chapter 33) states that employees are responsible for maintaining access cards in a secure manner. A question was raised on why the employee lending the access card was not part of the verbal reprimand or any other corrective action. The Laboratory Director's email response communicated that the initial complaint accused one person (Quality Manager) of the violation and did not identify the second employee. Therefore, the investigation was limited to the specifics of the complaint. The policy on verbal reprimands is a department wide policy and was reviewed during this investigation.

Objective evidence was obtained through onsite interviews that Controlled Substances employees were knowledgeable about the security requirement. When asked about lending their access cards, employees responded "no". However; after one interview; one employee returned to say she had lent her card to the

Quality Manager. This one-time event took place “a couple of years ago” and subsequent staff meetings reinforced the security requirement.

Recommendation – Complaint 2-A:

A records review and interviews revealed that APD documented the violation and initiated actions. Since the laboratory’s actions involved only one of the two involved parties, the effectiveness of the actions may be questioned. This appeared to be a one-time event occurring in 2010 and all interviewed personnel were well aware of the laboratory’s security policy. Objective evidence does not support this allegation.

Complaint

B. The complainant alleges that no actions were taken and/or documentation exists regarding a proficiency testing policy violation.

The complainant describes an event in which an analyst submitted completed proficiency test records to the Supervisor. The complainant then states that this analyst, upon reviewing data from other analysts, recognized her results were wrong. The analyst is alleged to have retrieved her test from the Supervisor and proceeded to re-work the test achieving the same response as her co-workers. Although the analyst’s name is provided, specific detail, such as the date of the alleged violation or identity of the proficiency test, is not provided. The analyst is no longer employed at the laboratory.

In response to this allegation, APD assumed the test to be from 2010, and communicated that interviews with analysts and a review of 2010 proficiency test records did not reveal any abnormalities or violations. The records review included a check of when proficiency test data was accessed and by whom. The Supervisor did remember the analyst submitting test results and asking for them a short time later. Since the results of this proficiency test (L10003985 - associated with CTS 10-501) had not yet been technically or administratively reviewed, the Supervisor was not concerned and provided the analyst with her case records but not the test sample. The complainant did provide additional information to support that the CTS 10-501 test was the one of interest.

APD’s proficiency testing procedure states that the section supervisors are responsible for ensuring that each proficiency test is independently completed. Although the procedure does not state that independent analysis is also a responsibility of the examiner, the interviewed analysts are aware that proficiency tests are to be worked without technical assistance. Proficiency tests are assigned case numbers in the LIMS and access to the LIMS files is limited to the analyst, supervisor and Quality Manager. Analysts communicated that lab case numbers are used on the data and not the easily recognizable CTS proficiency test identifiers. Interviews revealed that no currently employed analyst recalls discussing proficiency test results with this analyst while the test was in process. In addition, the interviewed analysts could not recall discussing any technical issues with other analysts while proficiency tests were in progress.

The expected results of CTS 10-501 were “No controlled substances” for one sample and “Hydrocodone” for the other sample. The review of APD records supports that, on 5/14/2010, the proficiency test was submitted to the Supervisor and the LIMS contained the results of “No controlled substances” on both test samples. On the sample of interest, the original GC/MS data stored on the LIMS reflects a small peak that has no annotation, no library searches, or any additional information.

The LIMS also documents that between and including the dates of 5/15/2010 and 5/26/2010, the result for one sample was changed from “no controlled substances” to “hydrocodone”. Additional GC/MS data was present supporting this conclusion.

Objective evidence, through records review and interviews, determined that:

- On 5/14/2010, the analyst transferred the proficiency test samples and documentation to the Supervisor. Original GC/MS data reflects a small peak in the region of Hydrocodone with no further work conducted.
- On 5/14/2010, the Supervisor approved the return of the proficiency test documentation, but not the test samples, to the analyst
- After the initial submission and subsequent retrieval of documentation to the Supervisor, the analyst conducted additional testing, produced new instrumental data and changed a test conclusion from “no controlled substances” to “hydrocodone”.
- Final results were documented as 5/26/2010
- Analysts do not recall discussing test results with this analyst
- The proficiency testing procedure is not specific enough to detail this type of event.

Recommendation – Complaint 2-B:

Interviews provided objective evidence that APD analysts are aware that proficiency tests are to be independently worked and did not discuss in-progress test results. A LIMS check of the proficiency test in question does reflect that changes were made after the first submission to the Supervisor and prior to the final submission. However, laboratory procedure is not specific enough to disallow changes prior to the technical and administrative reviews. There is insufficient evidence to support the allegation.

Complaint

C. The complainant alleges that incorrect preliminary results were released by an analyst and the error was corrected through the complainant’s re-analysis. The complaint states that the laboratory did not initiate any corrective actions to include re-training of the original analyst.

L10-00034, the case mentioned by the complainant, had preliminary results released by email on 1/2/2010. The preliminary results state “Instrumental analysis indicates the presence of Quetiapine (Dangerous Drug), 5.1g”. Supporting records include GC/MS data with a satisfactory blank run prior to the sample. UV was also conducted but produced no significant supporting information. After the release of this preliminary result information, the analyst completed additional testing and reported “No Controlled Substances” in the final report released 1/4/2010. The analyst recognized that the earlier result of Quetiapine was due to carry over from a case sample previously run by another analyst.

The analyst informed the Supervisor of the difference between her preliminary results and her later conflicting analysis. Initials of both the analyst and the Supervisor appear on the GC/MS spectrum of Quetiapine. The L10-00034 case record stored in LIMS includes both sets of data as well as a case related communication to the officer dated 1/6/2010 relaying that although preliminary analysis indicated Quetiapine, further analysis indicated no controlled substances. Quetiapine is not controlled but is considered a “dangerous drug” in the

state. The laboratory did not have additional records of investigating this specific carry-over incident and did not alert section analysts on the challenges of analyzing Quetiapine and its retention on the instrument.

The records review and interview provided objective evidence that the examiner documented the sequence of events appropriately, created awareness to the supervisor, notified the officer about the difference in reporting, and retained all records associated with the preliminary result and the final report.

Approximately eight months later, the complainant states that she was contacted by the county attorney's to take a second look at this case as DWI charges were still pending. The laboratory case record has no record of this case related communication and/or a request for additional analyses. On 8/14/2010, the complainant re-analyzed the evidence, noted the possible presence of isobutyl nitrite and released a report stating "no controlled substances." The complainant explained that this re-analysis was discussed with Section Supervisor Rodriquez and it was determined that since no standard was available for comparison, the report would communicate "no controlled substances".

A review of the re-analysis discovered the following events:

- Supervisor Rodriquez was on vacation during the week of 8/14/2010 and was not involved in any discussion on this case. Supervisor Rodriquez became aware of the re-analysis, at a later date, when conducting monthly statistics and recognized a LIMS case code that needed further investigation.
- The case record contained no information regarding communications requesting a re-analysis and contained no approvals for re-analysis
- LIMS reflects that the complainant both technically reviewed and administratively reviewed her report.
 - Although the drug section allows the analyst to administratively review his own report, the practice is that on all non-weekend case work, administrative review is conducted by another analyst. In 2010, 8/14 was a Saturday.
 - The drug section has a 75% technical review policy and strives to accomplish 100% on all non-weekend work. Analysts are not allowed to technically review their own work.
 - **Initial non-compliance with Legacy 1.4.2.22; While onsite, this case was technically reviewed by another analyst.**

The laboratory issued a record titled "L1000034 CAR" on 1/18/2011 (per the laboratory- this memo is incorrectly dated a year earlier "1/18/2010") explaining that two CARs related to this incident were issued:

1. First CAR concerned this technical event that prompted a change in processes:
 - Terminating the release of preliminary results in the section
 - The re-analysis was discovered in September 2010 and preliminary results were actually discontinued in October 2010
 - Requiring all results to be released per laboratory protocol of final reporting using a second supportive instrumental technique
2. Second CAR concerned the laboratory's delay in releasing a CAR at the time of occurrence

In summary, this case was analyzed for preliminary results in the same manner as other preliminary results during this time frame. Within a four day period, the final report was released and the officer notified of the differences between preliminary results and the final report. The request for re-analysis is not documented, the re-analysis was unauthorized, and the results of "No controlled Substances" were the same as reported in the

final report released by the original examiner. A review of the state's list of controlled substances at http://www.dshs.state.tx.us/dmd/control_subst_sched.shtm and the interview with the Supervisor confirmed that butyl nitrite is not a controlled substance in the state.

Recommendation – Complaint 2-C:

There is no evidence to support the allegation that the complainant's reanalysis corrected an earlier result released by the laboratory. There is no evidence in the case record to support an interest in re-analysis by legal authorities or a deficiency in the laboratory's original final report.

Although this case manager finds it concerning that the laboratory did not use this event to create awareness of the analytical challenges of Quetiapine, there is insufficient evidence to support that laboratory was negligent in its actions due to the absence of re-training the original analyst. Laboratory actions involved:

- **eliminating the preliminary result process that was being performed at the time and**
- **requiring final reports to communicate rush laboratory results.**

ADDITIONAL NON-CONFORMITY (Legacy 2008 Accreditation Program):

During the investigation of this complaint, two additional potential non-conformities associated with the same requirement were discovered. Requirement 1.4.2.16 states: *ARE CONCLUSIONS AND OPINIONS IN REPORTS SUPPORTED BY DATA AVAILABLE IN THE CASE RECORD, AND ARE THE EXAMINATION DOCUMENTS SUFFICIENTLY DETAILED SUCH THAT, IN THE ABSENCE OF THE EXAMINER(S), ANOTHER COMPETENT EXAMINER OR SUPERVISOR COULD EVALUATE WHAT WAS DONE AND INTERPRET THE DATA?*

Case records L1004326 (brown solid substance) and L1008571 (#11- green solid material) had final reports identifying the presence of Tetrahydrocannabinols. The APD procedures manual has sections on the microscopic examination of 1) plant material and 2) non-leafy plant material such as hashish, charred residue, oil extracts, or residue. The section relating to the microscopic examination of the non-leafy plant material has four steps listed:

1. *Observe the solubility of resinous material*
2. *Note if any plant material (particles) is present such as cystolithic hairs or green plant fragments.*
3. *Extract a sample with hexane or CHCl₃*
4. *Place a portion on a microscope slide ...and microscopically examine for characteristics of marihuana, including cystolithic and glandular hairs*

Another section in the procedure manual titled "Hash (Hashish)" specifies these two steps:

1. *Dissolve small amount on glass plate or slide*
2. *Observe for cystolithic hair, conical trichomes or filamentous hairs.*

The examination documentation does not allow for a competent examiner to know if the procedure was followed. It is not possible to determine whether or not the examination included the laboratory required solubility testing and slide preparation. It is also not possible to determine which solvent (Hexane and CHCl₃ are the two options) was used during the microscopic examination.

Case records L1004326 (brown solid substance) and L1008571 (#11- green solid material) had final reports identifying the presence of Tetrahydrocannabinols. The APD procedures manual has sections on the microscopic examination of 1) plant material and 2) non-leafy plant material such as hashish, charred residue, oil extracts, or residue. The section relating to the microscopic examination of the non-leafy plant material has four steps listed:

The section of the APD procedures manual relating to the microscopic examination of plant material states “*The observation of the presence of an appropriate number of cystolithic hairs or characteristic seeds is sufficient for positive test.*” The procedure also states that “*Positive microscopic examination results may be recorded in the analytical notes as “consistent with marihuana” or in more detailed notes.*” Due to the procedure allowing a positive microscopic examination to be recorded when cystolithic hairs or characteristic seeds are seen, the examination documentation recording of “consistent with marihuana” does not allow for a competent examiner to know what was observed microscopically.

Appendix A:

Preliminary Results

Offense number: 2010-0301358

Requested By: Officer

Date Requested: 01-31-2010

LIMS Number: L1001182

Report generated and administratively approved by: Glenn C. Harbison 1770

Report by (phone / pager / person / e-mail): Person

Date: 01-31-2010

Time: 13:00 hrs

To Whom: J. Bryant

Results:

Item Number: 1 **Tag #** 1696914-1

Instrumental analysis indicated the presence of Marihuana

Net weight: 1.31 grams / 0.04 ounce

Item Number: 2 **Tag #** 1696914-2

Instrumental analysis indicated the presence of Codeine cough syrup with promethazine

Net weight: 3.51 grams

Kiyak, Christopher

From: Kiyak, Christopher
Sent: Sunday, April 18, 2010 1:04 PM
To: Hubbs, Ken
Subject: Preliminary Results (Case #2010-6236)

Preliminary Results

Case: 2010-62367

LIMS: L1004326

Suspect: Stephen Torres

Requested by: Decker

Results Reported by: Email

Report Administratively Reviewed by: C Kiyak #6524

Tag: 1718831-1

Description: Brown solid substance

Preliminary Instrumental Results indicate: Tetrahydrocannabinols (Penalty Group 2)

Net Weight: 5.80

Chris Kiyak
Forensic Scientist

4/19/2010

Preliminary Results

Offense number: 2010-0301866

Requested By: Officer

Date Requested: 01-31-2010

LIMS Number: L1001183

Report generated and administratively approved by: Glenn C. Harbison 1770

Report by (phone / pager / person / e-mail): Person

Date: 01-31-2010

Time: 13:00 hrs

To Whom: J. Bryant

Results:

Item Number: 1 **Tag #** 1696973-2

Instrumental analysis indicated the presence of Cocaine

Net weight: 13.65 grams (total)

Item Number: 2 - 10 **Tag #** 1696973-3 thru 11

Instrumental analysis indicated the presence of Cocaine

Net weight: 221.40 grams (total)

Item Number: 11 **Tag #** 1696973-12

Instrumental analysis indicated the presence of Contains codeine cough syrup with promethazine

Net weight: 114.54 grams



Appendix B:

Analyst	Case #	Preliminary Result and Release Date/Time	LIMS Entry Date	Final Report Date
Harbison	L0900075	1/3/2009 at 3:30 (no email date/time stamp) (MJ)	Weight: 1/3/2009 at 3:21 Micro and Color test: 1/5/2009 at 1:52	1/6/2009
Harbison	L0900077	1/3/2009 at 3:30 (no email date/time stamp) (MJ)	Weight: 1/3/2009 at 3:15 Color test: 1/3/2009 at 3:15 Micro: 1/5/2009 at 2:11	1/6/2009
Harbison	L0900078	1/3/2009 at 3:30 (no email date/time stamp) (MJ and MDMA)	Weights: 1/3/2009 at 2:42 MJ Micro/Color test: 1/5/2009 at 3:34 MDMA Color Tests 1/3/2009 at 2:42	1/6/2009
Harbison	L1001182	1/31/2010 at 1:00 (no email date/time stamp) (MJ and Codeine)	Weights: 2/3/2010 at 2:05 and 2:06 MJ Micro and Color test: 2/3/2010 Codeine GC/MS 1/31/2010 prior to Prelim Results; Codeine Color test: 2/3/2010	2/9/2010
Harbison	L1001183	1/31/2010 at 1:00 (no stamp) (Codeine and Cocaine) Preliminary Result states "instrumental analysis..."	No LIMS entries on weights or tests made prior to 2/3/2010 LIMS not updated with color test results until 2/8/2010. No preliminary instrumental data for Cocaine. Per analyst – cocaine preliminary results were possibly based only on color test results	2/9/2010
Harbison	L1001185	1/31/2010 at 12:45 (no stamp) 1. MJ 2. MDMA (tablets) 3. MJ	Other than a tablet count on 1/31/2010, no LIMS entries on weights and testing until 2/3/2010 (after prelim result).	2/3/2010

Appendix C:

Analyst	Case #	Preliminary Result and Release Date/Time	LIMS Info/Entry Date	Final Report Date
Kiyak	L1006342	5/30/2010 @ 11:48 am (w/ email time stamp) Item 1 (straw colored liquid) <i>Phencyclidine, 1.95 grams</i>	Evidence was 4 vials of liquid. (identified on preliminary <u>instrumental</u> data as 1.1, 1.2, 1.3, and 1.4); no individual weights present in case record. Prelim GC/MS data exists on 5/30/2010 for the weight and: Item 1.1 – run start 11:11 Item 1.2 – run start 11:25 Item 1.3 – run starts 11:40 (PCP elutes at 6.3 minutes) Item 1.4 – run start 11: 54 – PCP elution time – approx. 12 noon after Prelim Result Released; included in weight in preliminary result)	6/9/2010 Reported as Item 1- liquid substance 1.95 grams
Harbison	L0905372	4/19/2009 <i>Instrumental results indicated the presence of Codeine cough syrup</i> <i>Documents the three weights of the liquids in the three bottles (44.74 g, 301.77 g, 796.68 g)</i>	Prelim Result has Codeine as a result and three weights reported. Instrumental data for two of the three bottles is present to support preliminary results. GC/MS preliminary result data for the 3 rd item is absent.	4/22/2009 Item 2 subdivided into 2.1, 2.2, and 2.3



AMERICAN SOCIETY OF CRIME LABORATORY DIRECTORS LABORATORY ACCREDITATION BOARD

July 24, 2012

William Gibbens, Forensic Services Manager
Austin Police Department
Forensic Science Division
PO Box 689001
Austin, Texas 78768

Dear Manager Gibbens:

On July 12, the ASCLD/LAB Board of Directors received a report which was prepared by ASCLD/LAB Proficiency Program Manager Patti Williams following her investigation of a number of allegations made against the Austin Police Department Forensic Science Division by Ms. Debra Stephens. You are being provided a copy of the investigative report with this communication. Each allegation was considered and acted upon by the Board. The allegations and the Board's conclusions are as follows.

The first allegation was that the Austin Police Department Forensic Science Division policies on preliminary results were confusing and that preliminary results were not supported by data. A side concern was that technical reviews were being conducted in an inconsistent manner (where reviews, refused by others, were approved by the Supervisor).

The second allegation included three parts as follows: (a) that no actions were taken and/or no documentation exists regarding a laboratory security policy violation; (b) that no actions were taken and/or no documentation exists regarding a proficiency testing policy violation; and (c) that incorrect preliminary results were released by an analyst and the error was corrected through the complainant's re-analysis. The complaint states that the laboratory did not initiate any corrective actions to include re-training of the original analyst.

Based upon the investigative report, the Board concluded that each of the allegations was without merit and that the investigation of the allegations would be closed.

In addition to the investigative report, Ms. Williams prepared a document on Opportunities for Improvement based on her observations during the investigation. A copy of the document is being provided to you with this report for your consideration and application as you may find it to be helpful.

The Board did note that the laboratory's prior practice of not retaining all of the examination documentation generated at the time of the preliminary testing was not in compliance with the requirements of criterion 1.4.2.16 of the 2008 ASCLD/LAB Legacy Program.

The Board noted that a random sampling of a few more recent Drug Chemistry cases suggests that this may not be a current practice. However; the Board has requested that your laboratory provide objective evidence that the practice has been corrected in drug chemistry cases and does not exist in other disciplines. On or before October 1, 2012, you are requested to provide Patti Williams with three (3) recent drug chemistry case files (including the LIMS audit trail) from each drug chemist and five (5) 2012 crime scene case files (representing different crime scene analysts).

Austin PD Laboratory Procedure – "Chapter 50 Release of Division Records and Information; Preliminary laboratory analysis information" states *When an exigent circumstance exists, analysis*

information may be provided to the investigating agency prior to the completion of all analyses by the analyst and issuance of the final "Laboratory Report." You are requested to provide Ms. Williams with five biology case files in which preliminary results were released and any additional non-Biology 2012 case files where preliminary results were released.

As a side issue from the investigation and as follow-up to an issue raised during the investigation of allegations made by Mr. Ron Fazio of Integrated Forensics, Inc., the Board has concluded that examination documentation prepared by the Austin PD Laboratory in cases of reported THC and Marihuana is not sufficient that another competent examiner could determine exactly what was done and/or observed by the examiner to reach the reported conclusion as required by criterion 1.4.2.16. The Board has concluded that the laboratory must take corrective action to comply with this requirement.

Ms. Williams has been requested to review documentation of compliance with this requirement in cases involving the identification of THC and Marihuana. You are requested to work with Ms. Williams and provide sufficient documentation to satisfy her that the laboratory has taken appropriate action to correct this non-conformity.

In the event that ASCLD/LAB is unable to resolve these concerns through review of case records which you provide, it reserves the right to request a revisit to your laboratory.

Your cooperation and the cooperation of the personnel in your laboratory during the investigation of this matter is and has been greatly appreciated. If you have any questions related to this matter, please feel free to contact me.

Sincerely,

Ralph M. Keaton

Ralph M. Keaton
Executive Director

cc: Pamela Bordner, ASCLD/LAB Chair
Pat Johnson, Texas DPS System Director
Patti Williams, ASCLD/LAB Proficiency Program Manager
Anthony Arnold, Quality Assurance Manager
ASCLD/LAB Office

EXHIBIT K

propagation, compounding, conversion, or processing of a controlled substance other than marihuana, directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes the packaging or repackaging of the substance or labeling or relabeling of its container. However, the term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

(A) by a practitioner as an incident to the practitioner's administering or dispensing a controlled substance in the course of professional practice; or

(B) by a practitioner, or by an authorized agent under the supervision of the practitioner, for or as an incident to research, teaching, or chemical analysis and not for delivery.

(26) "Marihuana" means the plant *Cannabis sativa* L., whether growing or not, the seeds of that plant, and every compound, manufacture, salt, derivative, mixture, or preparation of that plant or its seeds. The term does not include:

(A) the resin extracted from a part of the plant or a compound, manufacture, salt, derivative, mixture, or preparation of the resin;

(B) the mature stalks of the plant or fiber produced from the stalks;

(C) oil or cake made from the seeds of the plant;

(D) a compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake; or

(E) the sterilized seeds of the plant that are incapable of beginning germination.

(27) "Medical purpose" means the use of a controlled substance for relieving or curing a mental or physical disease or infirmity.

(28) "Medication order" means an order from a practitioner to dispense a drug to a patient in a hospital for immediate administration while the patient is in the hospital or for emergency use on the patient's release from the hospital.

(29) "Narcotic drug" means any of the following, produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a

EXHIBIT L

**ASCLD/LAB GUIDING PRINCIPLES OF PROFESSIONAL
RESPONSIBILITY FOR CRIME LABORATORIES AND FORENSIC SCIENTISTS**

*"If the law has made you a witness,
Remain a man of science.
You have no victim to avenge,
No guilty or innocent person to convict or save --
You must bear testimony within the limits of science."*

*Dr. P.C.H. Brouardel
19th Century French Medico-legalist*

Preamble

These Guiding Principles are written specifically for forensic scientistsⁱ and laboratory management. The concepts presented here have been drawn from other professional codes and suggestions made by leaders in the forensic community.ⁱⁱ The Guiding Principles have been vettedⁱⁱⁱ and adopted by the ASCLD/LAB Board of Directors and staff with the hope that laboratory management will use them in training sessions, performance evaluations, disciplinary decisions, and as guides in other management decisions. It is also important that all laboratory personnel, including forensic scientists and other laboratory employees who assist forensic scientists in their work, are equally aware of these Guiding Principles and support forensic scientists and managers by incorporating the principles into their daily work.

These Guiding Principles provide a framework for describing ethical and professional responsibilities in the forensic laboratory community. While not all inclusive, they describe key areas and provide some specific rules to supplement existing codes of ethics adopted by professional organizations and individual laboratories. The Guiding Principles are designed to promote integrity among practitioners, and to increase public confidence in the quality of laboratory services, whether or not the laboratory is accredited by any accrediting body.

ASCLD/LAB has adopted the ASCLD Guidelines for Forensic Laboratory Management Practices, many of which have been incorporated into the ASCLD/LAB accreditation standards. Those practices provide for management support of the guiding principles set forth below and are intended to create a culture of ethical behavior and professional responsibility within the laboratory. The ASCLD practices should be implemented and followed to give practical meaning to the Guiding Principles of Professional Responsibility for Crime Laboratories and Forensic Scientists.

Professionalism

The ethical and professionally responsible forensic scientist and laboratory manager . . .

1. Are independent, impartial, detached, and objective, approaching all examinations with due diligence and an open mind.
2. Conduct full and fair examinations. Conclusions are based on the evidence and reference material relevant to the evidence, not on extraneous information, political pressure, or other outside influences.
3. Are aware of their limitations and only render conclusions that are within their area of expertise and about matters which they have given formal consideration.
4. Honestly communicate with all parties (the investigator, prosecutor, defense, and other expert witnesses) about all information relating to their analyses, when communications are permitted by law and agency practice.
5. Report to the appropriate legal or administrative authorities unethical, illegal, or scientifically questionable conduct of other laboratory employees or managers. Laboratory management will take appropriate action if there is potential for, or there has been, a miscarriage of justice due to circumstances that have come to light, incompetent practice or malpractice.
6. Report conflicts between their ethical/professional responsibilities and applicable agency policy, law, regulation, or other legal authority, and attempt to resolve them.
7. Do not accept or participate in any case on a contingency fee basis or in which they have any other personal or financial conflict of interest or an appearance of such a conflict.

Competency and Proficiency

The ethical and professionally responsible forensic scientist and laboratory manager . . .

8. Are committed to career-long learning in the forensic disciplines which they practice and stay abreast of new equipment and techniques while guarding against the misuse of methods that have not been validated. Conclusions and opinions are based on generally accepted tests and procedures.
9. Are properly trained and determined to be competent through testing prior to undertaking the examination of the evidence.
10. Honestly, fairly and objectively administer and complete regularly scheduled:
 - relevant proficiency tests;

- comprehensive technical reviews of examiners' work;
 - verifications of conclusions.
11. Give utmost care to the treatment of any samples or items of potential evidentiary value to avoid tampering, adulteration, loss or unnecessary consumption.
 12. Use appropriate controls and standards when conducting examinations and analyses.

Clear Communications

The ethical and professionally responsible forensic scientist and laboratory manager . . .

13. Accurately represent their education, training, experience, and area of expertise.
14. Present accurate and complete data in reports, testimony, publications and oral presentations.
15. Make and retain full, contemporaneous, clear and accurate records of all examinations and tests conducted, and conclusions drawn, in sufficient detail to allow meaningful review and assessment of the conclusions by an independent person competent in the field. Reports are prepared in which facts, opinions and interpretations are clearly distinguishable, and which clearly describe limitations on the methods, interpretations and opinions presented.
16. Do not alter reports or other records, or withhold information from reports for strategic or tactical litigation advantage.
17. Support sound scientific techniques and practices and do not use their positions to pressure an examiner or technician to arrive at conclusions or results that are not supported by data.
18. Testify to results obtained and conclusions reached only when they have confidence that the opinions are based on good scientific principles and methods. Opinions are to be stated so as to be clear in their meaning. Wording should not be such that inferences may be drawn which are not valid, or that slant the opinion to a particular direction.
19. Attempt to qualify their responses while testifying when asked a question with the requirement that a simple "yes" or "no" answer be given, if answering "yes" or "no" would be misleading to the judge or the jury.

ⁱ The term “forensic scientist” is used throughout this document. These Guiding Principles are meant to apply to all laboratory personnel, including technical support personnel and others who assist forensic scientists in their work.

ⁱⁱ The materials from which the concepts embodied in these Guiding Principles have been drawn include:

- a. ASCLD Guidelines for Forensic Laboratory Management Practices.
<http://asclcd.org/files/library/labmgtguide.pdf>.
- b. ASCLD Code of Ethics. <http://asclcd.org/files/library/Code%20of%20Ethics.pdf>
- c. American Academy of Forensic Sciences Code of Ethics and Conduct. www.aafs.org.
- d. The Code of Ethics of the California Association of Criminalistics. www.cacnews.org.
- e. The Code of Ethics of the Midwestern Association of Forensic Scientists, Incorporated.
www.mafs.net.
- f. Schroeder, O. C., “Ethical and Moral Dilemmas Confronting Forensic Scientists,” *Journal of Forensic Sciences*. Vol. 29, No. 4, Oct. 1984, pp. 966-986.
- g. Lucas, D. M., “The Ethical Responsibilities of the Forensic Scientist: Exploring the Limits,” *Journal of Forensic Sciences*. Vol. 34, No. 3, May 1989, pp. 719-729.
- h. Peterson, J. L., Murdock, J.E., “Forensic Science Ethics: Developing an Integrated System of Support and Enforcement,” *Journal of Forensic Sciences*. Vol. 34, No.3, May 1989, pp. 749-762.
- i. Saks, M. J., “Prevalence and Impact of Ethical Problems in Forensic Science,” *Journal of Forensic Sciences*. Vol. 34, No.3, May 1989, pp. 772-793.
- j. Starrs, J.E., “The Ethical Obligations of the Forensic Scientist in the Criminal Justice System,” *Journal of the Association of Official Analytical Chemists*. Vol. 54, 1971, pp. 906-914.

ⁱⁱⁱ The draft of this document was distributed to thirty (30) forensic science organizations and several legal commentators for comment. The comments received were considered and many suggestions incorporated into the final version.